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The Modern Gay Rights Movement and Same-Sex Marriage in New York

By

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Thesis Abstract

This thesis is an exploration of the legal and social history of same-sex marriage in the state of New York with special attention given to New York City. It analyzes the progression of the history of the movement that led to the idea of same-sex marriage. The idea became an eventually goal of the gay rights' movement. The modern gay rights' movement began in New York City in 1969 with the Stonewall Riots. From these riots began a movement for equality on the part of the gay population. At first the movement was concerned with gaining sexual freedom and liberation, reflecting its influence from the sexual revolution. From this the movement was busy exploring the new possibilities that awaited them, now being able to openly be gay. Developing during the late 1960s and the early 1970s, the movement took on the radicalness of the time. The early movement was full of protests and marches but it all changed in 1980s. During the 1980s the movement saw a shift to a more conservative approach and goals with the coming of the AIDS crisis. Out of this came the idea of long term goals such marriage which would gain for them certain rights and privileges that were only reserved for married heterosexual couples. Also during this period the movement began to make strides within the courts by challenging the laws that discriminated the gay population in the state. This paper looks into the social and legal changes to explain how the same-sex marriage became a goal with the shift of the radical to conservative with a concentration focused on the outside factors such the court decisions, legislation as well as views of both homosexuality and the institution of marriage.

The history of this country for more than two centuries has been the story of once excluded individuals and groups gaining gradual access to equal rights under law. New York State, in particular, has played a proud and honorable part in that history, from hosting the foundational women's rights convention at Seneca Falls in 1848, to breaking baseball's color barrier, to witnessing the seminal event of the modern gay rights movement in New York City almost four decades ago.¹

The state of New York has seen many movements rise and fall over its history and in as recently as forty years ago it saw the rise of the struggle for equal rights for the gay, lesbian, bisexual and transgender community. The aforementioned quoted was taken from a piece of legislation that would approve same-sex marriage in New York. This legislation would cap off the goal of the gay rights movement that started in New York City almost forty years ago although marriage had not always been the goal, for the movement saw changes during its development. New York City gave birth to the radical modern gay rights movement in 1969 and since then has seen the conversion of the movement into a more conservative and family orientated one. Looking at the state with a special focus on New York City, the struggle for same-sex marriage can clearly be seen.

Emerging from the Stonewall Riots, the modern gay rights movement resembled many of the other civil rights movements of the day in that it was radical in nature as well as it tried to distinguish itself from the society that had oppressed it. Its immediate concerns grew out of the on-going sexual revolution which stressed sexual freedom, the right to express oneself and an idea that broke down assigned gender roles and institutions assigned by society. But over time this movement saw a drastic change with the devastation caused by the AIDS crisis especially in New York City due to its great

¹ New York State Bill A08590, S 5884.

gay population. This disease brought much attention to the gay community who up until this point still believed that sexual freedom was their goal. However AIDS proved to be the changing factor in that it altered their goals to a more family orientated and equal rights seeking movement. It left behind the right to freely have sex to the struggle for the rights to be equal in the eyes of the courts and government in their desire for a solid relationship. The movement matured as did its participants, looking forward to the future as opposed to the past when they sought out moments of fleeting pleasure.

The study of the rights of same-sex marriage has become an increasing topic within the world of social history especially in that pertaining to gay history. Among the topics that concern historians in the field is the beginning of movement. Some like to believe that the movement began in the 1920s with the increase of the gay subculture in areas such as New York City. Others often forget the era entirely and focus on the 1969 riots at the Stonewall Inn as the commencement of the modern movement.² As for the history of same-sex marriage, there are those who see it as an oppressive measure forced upon the gay community by society which in their mind eliminated the liberating freedoms gained from the early days of the movement.³ While a predominant number suggested that the right to marry evolved over time from within the movement. They argued that the radicalness of the movement which was about using sex as a tool for liberation as well as political, changed with AIDS and the need for rights and protections that heterosexual couples enjoyed.

² George Chauncey, *Gay New York: Gender, Urban Culture and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994), 1.

³ Suzanne Sherman ed., *Lesbian and Gay Marriage: Private Commitments, Public Ceremonies* (Philadelphia: Temple University Press, 1992), 20-26.

The idea of same-sex marriage has evolved for gays over a period since the Stonewall Riots. Immediately following Stonewall, gays mainly focused their attention on enjoying the sexual freedom that they believed they were entitled to while others began to motion towards organization in order to fight for equality. The 1970s saw an increase in radical actions on the part of homosexuals but with AIDS in the 1980s both their sexual practices and modes for improvement changed. During the 1980s there was more awareness about AIDS and other diseases that threatened the gay community. A shift from radical protests to a more practical form of advancement within the court system occurred. Also during the 1980s the strong idea of same-sex marriage came to be with so many dying, often leaving behind partners without rights or protection. But it was in the 1990s that saw a great amount of change in New York with an increase of rights but not for marriage. However it was after the 1990s that same-sex marriage became more and more of a reality with the societal changes of opinion, despite a number of threatening programs formulated by the Federal government. Gays in New York experienced a seesaw forty years with the thought of marriage as the furthest thing from their mind to now the main goals of the movement.

It was New York that became steeped in the gay history and culture during the turn of the century with many moving to the city to experience the open gay lifestyle afforded them by the waterfront, the Bowery, Times Square among a few, which made it a perfect place for a movement to start.⁴ “A gay enclave had quietly developed in Times Square before the 1920s because the theater and the district’s other amusement industries attracted large numbers of gay men,” but it was during Prohibition that this subculture

⁴ Chauncey, *Gay New York*, 11.

entered into prominence.⁵ Also during this period the city saw the rise of another soon to be famous gay district, Greenwich Village. During this time the Village became associated with advanced minds such as poets and artists and their laid back lifestyle which many gays believed would translate into acceptance of sexual nonconformity.⁶ Over time New York has remained a home to the gay community with a population of 592, 337 as of October 2006, which made it the third highest state with an estimated 272, 493 found in New York City.⁷ This made the issue and its examination within the state and city especially important. The movement primarily existed within the ever expanding New York City while a number of very important court cases arose from remaining areas of the state.

Before dealing with the events at the Stonewall Inn, it is necessary to understand the existing situation for homosexuals in New York City and state which provided an ample area of history, strife and resolve to properly analyze the birthplace of the modern gay rights movement. Many New Yorkers believed in the same morality and stereotypes that was common during the post-World War II era prior to Stonewall. These stereotypes found their origin in the Christian belief of the early Americans who saw homosexuality as immoral and a societal evil.⁸ The label of homosexuals as sinners remained with them even into the 20th century where lawmakers acted on such ideas when they created laws that discriminated them.

⁵ *Ibid*, 301-302.

⁶ *Ibid*, 227.

⁷ Gary J. Gates, "Same-sex Couples and the Gay, Lesbian, Bisexual Population: New Estimates from the American Community Survey, October 2006;" University of California School of Law; available from <http://www.law.ucla.edu/williamsinstitute/publications/SameSexCouplesandGLBpopACS.pdf>; Internet; accessed 1 July 2008.

⁸ David Carter, *Stonewall* (New York: St. Martin's Press, 2004), 14.

The riots at the Stonewall Inn were a result from the built-up anger that gay bar and club patrons had accumulated as a result of the New York State and city governments. It was not a one day incident that caused that night but rather forty plus years of discrimination. In 1923, New York issued a sodomy law, which punished men for “frequent[ing] or loiter[ing] about any public place soliciting men for the purpose of committing a crime against nature or other lewdness.”⁹ Then in 1927, New York State introduced a “pad-lock law” which threatened to close any theater that depicted gay and lesbian characters.¹⁰ At the end of Prohibition in 1933, the state began a program to regulate the sale and consumption of alcohol with the State Liquor Authority placed in charge its enforcement. This group alone had the authorization and power to close a bar simply because of the presence of homosexuals since it was their interpretation of the laws that made this possible. But it was the continued sense of seeing homosexuals as sinners and outsiders that further added to their discrimination with the American mindset during the 1950s.

With the end of the World War II, America began a rebuilding phase due to the return of troops and the birth of the baby boomer age. The 1950s also saw an increase stress placed upon the conformity especially in the context of the traditional family. During this proclaimed age of innocence, gender roles, the idea of marriage and early concepts of sex were formed. From the 1950s people conjure up the thoughts of the typical “Leave It to Beaver” family lifestyle with every member sitting around the kitchen table having dinner. It was from this that the strong gender roles were assigned.

⁹ Chauncey, *Gay New York*, 172.

¹⁰ George Chauncey, *Why Marriage?* (New York: Basic Books, 2004), 6.

This was the age that gave way to stay at home mothers, who prided themselves on their domesticity.¹¹ Men on the other hand were the breadwinner of the household as well as serving as head of the family. Anything outside of this was seen as abnormal. As for dating, premarital sex was seen as taboo and if a girl was found to be pregnant, she would often be ostracized by the community for being a “bad girl.”¹² Also during this time women were more likely to pursue a husband than a college degree which further stressed the idea of marriage and family. It was typical for young people to marry out of high school and soon after start a family, most of the time with the women entering the marriage as virgins. Those who waited until their twenties were seen as odd and became endangered of being an old maid.¹³ From the 1950s came the standard of how a courtship and following marriage was established.

Homosexuals and their lifestyles stood in direct opposition to this which resulted in a great amount of unwanted attention. The federal government during the 1950s began investigations into the discovery and dispelling of gay federal employees. From this came the presidential declaration of Dwight D. Eisenhower’s Executive Order 10450, which allowed termination based on sexual perversion and any other activity that stood opposed to the national government.¹⁴ During this period also emerged McCarthyism that further called for uniformity in America. Now homosexuals found themselves in the awkward position of standing out in the homogeneous American society. At its height

¹¹ PBS, “People & Events: Mrs. America: Women’s Roles in the 1950s”; available from http://www.pbs.org/wgbh/amex/pill/peopleevents/p_mrs.html; Internet; accessed 13 July 2008.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ David Carter. *Stonewall* (New York: St. Martin’s Press, 2004) 14.

during the 1950s and 1960s the U.S. State Department either discharged or forced out more homosexuals than Communists.¹⁵

Following the 1950s and its standard practices pertaining to family and marriage, came the 1960s and its liberating lifestyle of the sexual revolution. Although not an actual revolution, the sexual revolution saw a great change in how Americans approach sex and its relating issues. The revolution which generally saw its beginning in the early 1960s but it was 1963-1964, when mass media had discovered it.¹⁶ It advocated sexual freedom and expression during times of social conservativeness.¹⁷ Of the many results of this revolution was lower age at which people started having sexual intercourse with an increased number of sexual partners. Rejected at first by conservatives and seen as against the American standard, the sexual revolution did much for the loosening of society's strictness. The sexual revolution changed the way people viewed and acted when it came to sex. Emphasis on virginity and marriage were slowly replaced with the exploration of the single life.¹⁸ During this time sex became more mainstream with the introduction of pornography as well as adult magazines like *Playboy*.¹⁹ However the sexual revolution also allowed for the acceptance of otherwise forbidden sexual experimentations, one being homosexuality. Gays were greatly influenced by the revolution despite publicly joining late in its progression after Stonewall.

The sexual revolution as well as the various other civil rights movements helped gays to realize their own sexuality as something that was not evil. It made them aware

¹⁵ David K. Johnson. *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government*. (Chicago: University of Chicago Press, 2004.) 166.

¹⁶ Tom W. Smith, "A Report: The Sexual Revolution?," *The Public Opinion Quarterly* 54, no. 3 (Autumn, 1990): 415.

¹⁷ PBS, "People & Events: The Pill and the Sexual Revolution"; available from http://www.pbs.org/wgbh/amex/pill/peopleevents/e_revolution.html; Internet; accessed on 13 July 2008.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

that their fight was just like any other, in that they were deprived of rights that were granted to others. It was the sexual revolution that allowed this awareness and realization that was necessary for the courage needed to start their own movement. Joining these feelings was the previous years of discrimination on the part of the state and local government and their respective law enforcement agencies.

During the years prior to Stonewall, under orders of the Mayor Robert F. Wagner, Jr., the NYPD conducted raids on bars and restaurants often resulting in its closure and arrests of individuals on the ground of their sexual preference, since any act of homosexuality were illegal. Although the police repeatedly denied it, its most often used tactic was the illegal practice of entrapment. Plain clothes officers would entice gay men into coming on to them and would then arrest them on the charges of prowling the streets making unsolicited advances toward people. But in reality it was the police who would make advances toward the gay men even sometimes exposing themselves to draw more attention. This illegal procedure resulted in the closure and arrest of gay men and the establishments that they frequented. With the aid of Dick Leitsch, president of the Mattachine Society of New York, the practice of entrapment was brought to an end which allowed the community to resume their bar lifestyle with gay bars now being legal.

With John V. Lindsay's mayoral victory in 1966, the gay community saw slight increases in their rights and protections. Any form of entrapment was discontinued as well as a change in the law; now making it only possible for a private citizen to bring charges against a homosexual for making an unwanted sexual proposition.²⁰ Also changed were the laws dealing with discrimination in the work force. Employment was

²⁰ Robert Amsel. "Back to our Future?"; available from <http://www.thegreenduck.com/ga/stonewall.shtml>; Internet, accessed 28 April 2008.

opened to all in January 1967, with the exception of the fire and police department which would take a number of more years to change.

But the greatest event for the gay community during the 1960s was the Stonewall Riots which started on June 28, 1969. The night began when Deputy Inspector Seymour Pine announced, "Police! We're taking the place!"²¹ Some of those inside were used to such police raids which the gay community had become accustomed to over the past few months. It had become a custom for the police to raid a club either at the beginning or the end of the night so that the clubs could still enjoy a majority of the operation hours; however this raid on Stonewall was conducted during the bar's peak hour. This fact alone upset the patrons of Stonewall who had just arrived and did not wish to leave. Those who did not want to leave felt betrayed by the police department because they saw it as the police trying to remove them from their own place. The Stonewall Inn, like many other gay bars, was seen as the last refuge for many homosexuals, a place where they could be themselves.

As much as they argued all but those to be arrested were removed from the bar but did not disperse as the police had hoped. They began forming a large crowd outside which was getting angrier by the minute for being thrown out and the unwarranted treatment that they were receiving from the police. This anger spread throughout the crowd which was quickly followed by the thought, "This shit had got to stop."²² But any form of retaliation began when police began arbitrarily beating those closest to them. The crowd responded by throwing coins, bottles and trash cans, even going as far as lighting trash cans on fire and tossing them at the police who now sought refuge in the

²¹ Carter, *Stonewall*, 137.

²² *Ibid.*

bar. This action added to the anger that the patrons felt because it was seen as a slap in the face. The Stonewall Inn which acted as a safe haven for the gay community was now being used a safe place for the police. The police inside were aided with the arrival of reinforcements which after some time quieted the crowd who eventually dispersed. But the riots would continue for two more nights, Saturday and Wednesday.

Saturday night was the first sign of a united front working towards the success of the movement. Various accounts of the night recalled, "The initial chants were slogans such as "Gay power," "We want freedom now," and "Equality for homosexuals," but before long the rallying cries became more militant as the demonstrators shouted: "Christopher Street belongs to the queens!" and "Liberate Christopher Street!"²³ The night resembled the same pattern of the previous ending around 2:30 A.M.

After two straight nights of rioting, Sunday through Wednesday were calm with the riots re-erupting Wednesday night, July 2. There were two main reasons that the riots picked up again. The first dealt with the articles written in *The Village Voice* by two reporters who were at the riots the first night. Both articles, which ran side by side on the front page, demeaned the gay population with their tone and language. Each used words such as "limp wrists," "faggots" and "dyke". This enraged the population who saw this as a blatant attack on their persons. The second reason was that by Wednesday the gay community was joined by various radical left groups. As appealing as this may have sounded for the gay movement to be joined by others, some believed that the various groups were exploiting their cause for their own gain. These groups tried to feed off the notoriety of recent riots by riding the popularity with their names on the cause.

²³ Carter, *Stonewall*, 183.

Wednesday night also saw for the first time an increased attempt in organizing a rowdy, angry crowd into a group that could be used as a foundation for a larger movement for equal rights. The Mattachine Society saw an opportunity to step in and spread its message to the night's participants. Although some its members were against the riots because they believed that the movement could be accomplished through legislation and meetings, others including the number of the leadership passed around pamphlets expressing the reasons why the riots were occurring and how the movement should progress.

Wednesday saw the end of the Stonewall Riots with a number of arrests, damaged store fronts, cars and the Stonewall itself and one death. The death was a side effect of the riot when a taxi driver was having a heart attack and was unable to leave the blockade formed by the protesters. Despite the destruction, injuries and arrests, it was known to the world that the gay community in New York City had enough and they were not to be exploited anymore. Summing this up was *New York Post* reporter, Ronnie Di Brienza, "But the word is out. Christopher Street shall be liberated. The fags have had it with oppression."²⁴

Stonewall represented the first sign of a mass movement as opposed to the previous attempts by the gay community in its attempt to organize. For years prior there had been a number of groups but often these groups were isolated from the mass community and worked quietly, moving the movement along with little attention. But with the parallel sexual revolution, it made the gay agenda a more public event. Stonewall could have only occurred with the help of the sexual revolution with its creation of a more accepting society. The riots showed the general New York public that

²⁴ Ronnie Di Brienza, "Stonewall Incident," *New York Post*, 3 July 1969.

there was a large gay community and that they were deserverant of equal rights and the right to be gay. Stonewall brought the idea of the gay rights movement to the forefront and helped along with the old groups who previously had done little in the effect of securing rights. It marked the public entrance of the gay movement.

Gays in New York who had longed realized that their rights were being denied now believed that the time was now to make their stand. Stonewall gave gays the courage to begin their battle against the establishment both culturally and legally. They now desired to secure rights to protect their jobs, housing and health but they also saw the chance of expression that had so long been denied for them.

It did not take long for those in the community to mobilize and start planning for the future. A July 24 meeting at Alternate U. was called by Bill Katzenberg, Charles Pitts and Pete Wilson.²⁵ Also involved as before was the Mattachine Society with its production of "The Hairpin Drop Heard Around the World," by leader Leitsch. But although both groups were working for the same goal of equality there would soon be division following the July 24th meeting.

The meeting drew about forty people mostly those on the radical side. After introductions and some discussion, it was agreed upon to meet again in one week. During the time in between, came the Gay Power Vigil and March to the Stonewall Inn with the key speakers being Marty Robinson and Martha Shelley. This march proved to be a great stepping stone for the movement because it was here that talk turned into action. A new logo was established with a pair of female symbols interlinked on the right with their male counterpart on the left on a lavender banner. Both speakers provided moving speeches reiterating the gay power slogan and the idea of ending suppression.

²⁵ Carter, *Stonewall*, 209.

But when the speeches were over instead of marching to the Sixth Precinct station as promised, Robinson and Shelley collected money and then urged the crowd to disperse.²⁶ For this John O'Brien, a member of the Mattachine Society leadership, promised to leave the group because he felt betrayed, believing that the society was scared to move forward without upsetting the establishment.

The march proved to be a success in the sense of displaying their determination and presence but when it came to actually making an effect it came up short. This is where the full step forward was taken at the second militant meeting at Alternate U. on July 31st. This meeting gave birth to the Gay Liberation Front or GLF as it would soon be known. Naming the new organization was the least of the GLF's problems. During the inaugural meeting, the question of its goals arose. The group took a vote on whether or not it would become an awareness group or a more militant one similar to other civil rights groups. There was a division amongst the group with two separate parties voting on what the group would become. The more radical side emerged as the leaders of the group which was seen in GLF's statement of purpose, "We are a revolutionary group of men and women formed with the realization that complete sexual liberation for all people cannot come about unless existing social institutions are abolished. We reject society's attempt to impose sexual roles and definitions of our nature."²⁷

The group's radical ideas were further seen in their stances against capitalism, racism and the nuclear family. This was clearly stated in the GLF's United Kingdom counterpart whose founding members had worked for the New York division. Under its section on family it laid out the group's belief towards it, "The oppression of gay people

²⁶ *Ibid*, 218.

²⁷ Gay Liberation Front, "History"; available from <http://www.gayliberationfront.com/History.html>; Internet; accessed 2 July 2008.

starts in the most basic unit of society, the family, consisting of the man in charge, a slave as his wife, and their children on whom they force themselves as the ideal models. The very form of the family works against homosexuality.”²⁸ The manifesto went on to stress the idea of how society’s standards, which were not unfamiliar to New York, had put great pressure on the gay community causing it to become the free loving group that it was becoming, “The fact that gay people notice they are different from other men and women in the family situation, causes them to feel ashamed, guilty and failures.”²⁹

The New York group helped the gay community move on with demonstrations and marches where they would often chant for gay equality. The group also held dances in order to fundraise and provide a sense of unity within the community. At these dances many gay men and women were finally be able to express themselves often for the first time. However in 1972, the GLF separated due to internal issues that began in 1969, with a vote to send a monetary contribution to the Black Panthers.³⁰ Many resigned from their positions and left the group that night because they felt that the Black Panthers were more homophobic than any of their enemies.³¹ But it was not the end for the movement but the birth in another group, from those members who had left GLF.

Dissident members found themselves creating the Gay Activists Alliance (GAA) in New York during December 1969, with former GLF treasurer, Jim Owles as its first president. The GAA’s constitution echoed the reason for its split from GLF in that it was “exclusively devoted to the liberation of homosexuals and avoids involvement in any

²⁸ *Gay Liberation Front: Manifesto* (Nottingham, England: Russell Press Ltd., 1979).

²⁹ *Ibid.*

³⁰ Carter, *Stonewall*, 232.

³¹ *Ibid.*

program of action not obviously relevant to homosexuals.”³² The GAA believed that the GLF was more concerned with the overall social improvement rather than the improvement of homosexuals which the group was set out to do. In response, the GLF claimed that the GAA was too white, patriarchal and more willing to assimilate into the heterosexual society than they were.³³ The GAA single issue allowed it to focus its full attention and energy in securing freedom and equal rights for the gay community. This also allowed the group to become more active and radical in their approach. GAA would only barely see itself into the 1980’s with numerous splits in the group and differences between leadership and the rest of the group as to where they saw the group going.

However short these initial groups were, their lasting impressions on the movement are invaluable. They set the pace for the movement with their immediate reaction to Stonewall. Oddly enough their demise led to an increase in other gay and lesbian groups who would continue the fight. In 1969, there were fewer than fifty gay organizations in the country but by 1974, there were close to one thousand.³⁴

This revolution and movement would see further differences from that of the old groups from the 1950s in that it insisted on homosexuals becoming comfortable with themselves and declaring their homosexuality. The old way was to assimilate while keeping their sexuality quiet, only choosing to talk about it when necessary. But the seventies saw a contradiction to the old guard of remaining in the closet, this decade saw a dedication to the new slogan founded at Stonewall, “I’m gay and I’m proud.” Despite

³² Benjamin H. Shepard, “The Queer/Gay Assimilationist Split: The Suits vs. the Sluts,” *Monthly Review*, May 2001, 52.

³³ Donn Teal, *The Gay Militants: How Gay Liberation Began in America, 1969-1971* (New York: St. Martin’s Press, 1971), 83.

³⁴ *Ibid*, 31.

the fact that both organization only lasted a few years into the 1970s, their impact was felt.

The seventies saw the culmination for homosexuals within the sexual revolution, intertwining it with their own. According to gay novelist Brad Gooch, "The '70s mode of behavior was a great Dionysian phase."³⁵ A possible explanation for this is found in a 1989 *Newsweek* article, "At first sex with multiple partners was seen as a political act: class barriers crumbled in the gay bars, bourgeois standards tumbled. But soon hedonism became an end in itself."³⁶ With years of repression still present in their minds, gays sought to finally be free in their venture of partners. The loosening effect of the sexual revolution allowed for gays to begin creating their own standard of living since their previous lifestyle was driven by privacy and secrecy. But as liberating and worthy for the cause as the sexual revolution was, it also left the community with image that it would struggle to shake in the future, that of the stereotypical gay man concerned only with sex.

After years of being forced to hide their identity out of fear, homosexuals finally had the chance of being their own people. But since the standard morality of society did not apply to them they found themselves with an identity that emerged from casual, promiscuous sex of the clubs and bathhouses. Though enjoyable during the time, this would in the future hinder some from trying to be meshed into regular society since theirs stood against it. Oddly though, it was this same society that forced this role upon them by ignoring the gay lifestyle.

³⁵ BNET, "Worldly wisdom: Brad Gooch wrote his way through the sex-drenched '70s and AIDS-plagued '80s."; available from http://findarticles.com/p/articles/mi_m1589/is_2003_August_19/ai_106560159; Internet; accessed on 13 July 2008.

³⁶ Eloise Salholz, "Stonewall," *Newsweek*, 3 July 1989, p. 56.

The role that eventually became their common practice prior to Stonewall consisted of meeting others at secret waterfront bars or tucked away park benches for sex. This subculture of the gay community existed for years in secret but with the sexual revolution was brought into the public. Bathhouses, bars and discos often offered men and women back rooms which could be either rented or freely used for various sexual encounters. This perpetuated the extreme sexual lifestyle of the gay community.

In the American society, there was no formal practice of establishing a relationship and meeting people in place for homosexuals and with all the sexual repression that had built up over the time, it became unlikely that they would assume the heterosexual style of courtship. So the community developed their own from the previous practices which revolved around sex. Contrary to a heterosexual form of courtship, homosexuals worked backwards forming a relationship out of their sexual encounter. "Gay life circumvented the courtship phase. You could not pick up a boy at his house. Instead you went from sex to courtship and built the relationship backwards," said a New York novelist and playwright.³⁷

Society at large did not help in trying to reverse this process. Gays were often limited in the places that they could go, leaving them with only strictly gay bars and clubs with those few straight establishments willing enough to serve a gay couple. This along with the resulting effects of the sexual revolution created the practice of anonymous sex with no attachments which developed as a popular one among gay men. This type of lifestyle flourished after the Stonewall Riots and it was these practices that in fact caused damage to the would-be movement for equal rights.

³⁷ Michael Norman, "Homosexuals Confronting a Time of Change," *New York Times*, 16 June 1983, p. A1.

The biasness that people felt against homosexuals and their lifestyle of sexual exploration, was seen during the 1970s and the gay struggle for rights. With the help GAA, much action was taken with some positive results. First it was on the local level in New York City where the group was responsible for helping to propose the first piece of homosexual legislation in the nation to the city council. GAA and New York State Assemblyman William Passannante's tried to pass the Fair Employment Bill, which sought to amend the State's Executive Code to prevent discrimination against homosexuals in employment, housing and public accommodations.³⁸ However the bill was defeated in May 1971, led by pressure placed upon the councilmen by conservative municipal unions, with the most coming from the Fire and Police department. A number of religious groups led by the Catholic Church also helped in the bill's demise. Attempts to try the bill again went unsuccessful for the next fifteen years. But only months later was the GAA at work again by initiating public hearing dealing with fair employment for the New York City Commission on Human Rights. The GAA would also become very active in the eliciting of support of local politicians through sit-ins and public demonstrations.³⁹ At it again in 1971, was Assemblyman Passannante, who lobbied but failed for a domestic partners bill that would legitimize nontraditional relationships.⁴⁰

These bills and legislations failed partly due to the images that pervaded the homosexual culture. One of the major criticisms against the gay community was the stigma that was assigned to them by the medical profession. Unable to understand homosexuality, many assigned the sexual orientation as mental disorder which could be

³⁸ International Gay Information Center, Inc., "Gay Activists Alliance"; available from <http://microformguides.gale.com/Data/Introductions/20240FM.htm>; Internet; accessed 5 May 2008.

³⁹ *Ibid.*

⁴⁰ "William F. Passannante, 76, Greenwich Village Legislator," *New York Times*, 18 December 1996.

cured over time with therapy. This idea swayed away legislators from granting equal rights since they did not see homosexuals on an equal plane. They viewed them as mentally ill and thus unqualified for certain rights pertaining to housing and employment that straight, mentally fit individuals were guaranteed. However this perspective could not be used any longer due to its declassification as a mental illness by the American Psychiatric Association in 1973.

The unanimous vote of 13-0 for declassification came on December 15, 1973 but did not take effect until January 1974.⁴¹ This action was praised by those who supported the gay cause since it removed the label of mental ill that many had assigned them. Being gay was no longer a sickness that should be feared nor was it one that should warrant unequal treatment by the government. A reason for this change was voiced by psychoanalyst Robert Spitzer, the author of the board's position paper. He admitted that the deletion would result in the removal of "one of the justifications for the denial of civil rights to individuals whose only crime is that their sexual orientation is to the member of the same sex."⁴² This had been the case in the past for homosexuals who were denied the equal treatment because the outside world viewed them as ill. It proved important because many professionals in the medical world held the same beliefs. "Homosexuality is a psychiatric or emotional illness. I think it's a good thing if someone can be cured of it because it's so difficult for a homosexual to find happiness in our society," stated Dr. Lionel Ovesey, professor of clinical psychiatry at Columbia College of Physicians and Surgeons, in the summer of 1970.⁴³ He furthered the view of the medical world by

⁴¹ "Sexuality Research & Social Policy," *Journal of NSRC*, September 2004, Vol. 1, No. 3.

⁴² "An Instant Cure," *Time*, 1 April 1974.

⁴³ Steven V. Roberts, "Homosexuals in Revolt," *New York Times*, 24 August 1970, p. 1.

stating that although homosexuals deny the illness; it has been proven that “one of every four homosexuals who seek psychiatric help can lead a heterosexual life.”⁴⁴

However there were those who opposed the removal including a New York psychiatrist, Charles Socarides who demanded a referendum for all of the members of the APA to vote. He declared of the ruling, “It is flying in the face of the one fact we know, which is that male and female are programmed to mate with the opposite sex, and this is the story of 2 ½ billion years of evolution and any society that hopes to survive.”⁴⁵ Soon to follow were both the American Psychological Association and the American Medical Association with their removal.⁴⁶

The seventies continued with minimal improvement legally speaking with its biggest victory coming with Mayor Ed Koch’s executive order prohibiting discrimination based on sexual orientation by city employees. However a second order banning discrimination by those who supplied the city was struck down due to the fact that religious organizations were exempt from civil rights legislation. The theme of the seventies was progression through protests and mass marches but the eighties saw a change in how the movement would improve. By choice or not the eighties saw an increase of litigation over the struggle through protesting for legislation. It was a shift that sought to change laws by challenging them in court. One of the first to bring some change occurred in 1980.

In 1980, Ronald Onofre was convicted for violating the New York Penal Law, which listed sodomy as a misdemeanor. The law defined sodomy as any sexual act that

⁴⁴ *Ibid.*

⁴⁵ “An Instant Cure”

⁴⁶ “Resolution of the Council of Representatives of the American Psychological Association,” *American Psychologist* 30, 1975:633.

included anal and/or oral sex between both same-sex and opposite sex participants.⁴⁷ The major fact that the court was forced to deal with was that Onofre was caught having sex with his male lover, who at the time was seventeen years old, while within his home. The lower court decided to deny the defendant's motion to dismiss on the grounds that the statute was an invasion of his constitutional right of privacy as well its denial of equal protection.⁴⁸ Others included in the appeal's case were those also convicted under the same statute. The Court of Appeals agreed with Onofre and the others that the sodomy law was unconstitutional. The Court's decision was voiced in the opinion of Judge Jones, in which he argued that despite the fact that such acts may be seen as abnormal within society, every individual is allowed to seek sexual gratification as long as it is voluntary and within a private setting.⁴⁹

But more importantly the court decision invalidated the New York sodomy law. However Judge Jones in his opinion stressed that the decision did not set new ground in that it did not repeal the sodomy law. He cited *Doe v. Commonwealth's Attorney for City of Richmond, D.C.*, to support the court's stance.⁵⁰ In *Doe*, the District Court in its opinion "addressed the constitutionality of the statute and concluded that it was not invalid; its disposition included no declaration of constitutionality, but merely denied the relief requested and dismissed the complaint."⁵¹ The Court of Appeals thus ruled the sodomy law unconstitutional which made the law unenforceable; however, it was not

⁴⁷ The People of the State of New York, Appellant v. Ronald Onofre, Respondent v. Conde J. Peoples, II and Philip S. Gross, Appellants v. The People of the State of New York, Respondent v. Mary Sweat, Appellant. Court of Appeals of New York, 51 N.Y. 2d 476 1980.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

removed from the books.⁵² An unconstitutional law must be removed by an act of the legislature, which did not occur until 2000. During this period from *Onofre* until its repeal, the law sat as an insult to the gay community.⁵³ The legislature did not choose to remove a law that blatantly stood in contradiction to the state's privacy act of the constitution. Although a victory, it still showed the resentment that the general public showed toward the gay community by leaving the law in place.

However this victory was short lived due to a great blow to the gay community that almost derailed the whole movement. From the period of October 1980 – May 1981, there were five cases of gay men being diagnosed with a rare cancer. Of these five, two died shortly after entering the hospital. At first it was believed that they had pneumocystis carinii pneumonia with each also having cytomegalovirus infection and candidal mucosal infection.⁵⁴ For the time being the disease was called PCP for the pneumocystis pneumonia that it had been believed in was. Over the next year and a half cases of PCP were reported all over the country. Then in June 1982, a group of a cases broke out in South California suggested that it might be a sexually transmitted infectious agent that was causing the disease. From this point on because of its association with gay men and the fact that this rare cancer broke down the immune system, the disease was renamed by scientists as the “gay-related immunodeficiency disease” or GRID.⁵⁵

The misnomer was replaced two months by the Center of Disease Control during a meeting on July 27, 1982, when it opted to label the disease: acquired

⁵² Sodomy Laws, “New York: Answers to Common Questions,” available from <http://www.sodomylaws.org/>; Internet; accessed 3 July 2008.

⁵³ *Ibid.*

⁵⁴ Morbidity and Mortality Weekly Report, “Pneumocystis Pneumonia-Los Angeles”; available from http://www.cdc.gov/mmwr/preview/mmwrhtml/june_5.htm; Internet; accessed 18 May 2008.

⁵⁵ Lawrence K. Altman, “Clue Found on Homosexuals’ Precancer Syndrome,” *New York Times*, 18 June 1982.

immunodeficiency syndrome or AIDS.⁵⁶ However even with the changed name, it was still established that the disease, although not restricted to, primarily affected homosexuals. In a CDC report which was released in September 1982, it was calculated that seventy-five percent of AIDS cases recorded between June 1, 1981 and September 15, 1982 involved homosexual or bisexual men.⁵⁷ This greatly affected the perspective of the gay community especially that of the male community. This association often resulted in much harsher treatments of homosexuals by the public and by the government and courts.

One such clamping down by a state government and courts came at the hand of a persistent police officer which resulted in the highly important Supreme Court case, *Bowers v. Hardwick*. The court case partly rose out of the growing concern of homosexuals due to the AIDS epidemic. Laws and statutes that were in place for years were no longer ignored and were beginning used in states such as Texas. The AIDS virus had brought onto the gay community across the nation an unwanted form of attention in that it added to the stigma of their evil and sickness of their sexual orientation. After the initial few years in the 1970s, it was AIDS that again brought the nationwide attention to the gay movement. But unfortunately there were times when the attention did not bring an end that was hoped. This was such the matter with the *Bowers* cases when law enforcement wanted to show that there needed to be a regulation on the acts of the ever increasingly dangerous homosexual population.

⁵⁶ Unmesh Kher, "July 27, 1982: A Name for the Plague"; available from <http://www.time.com/time/80days/820727.html>; Internet; accessed 18 May 2008.

⁵⁷ Morbidity and Mortality Weekly Report, "Update on acquired immune deficiency syndrome (AIDS)-United States"; available from <http://www.ncbi.nlm.nih.gov/pubmed/6815471>; Internet; accessed 25 May 2008.

In August of 1982, Atlanta Police Officer K.R. Torick issued Michael Hardwick a summons for drinking in public. Hardwick believed the ticket was a result of a gay vendetta that Torick had.⁵⁸ After missing the first court day for the ticket, Hardwick went to the courthouse to pay it. However the payment of the ticket must not have reached Officer Torick who went to Hardwick's apartment to issue a warrant for non-payment. While at the apartment, Officer Torick discovered Hardwick and another man engaged in oral sex.⁵⁹ Upon seeing this, Officer Torick immediately arrested the men for violating Georgia's sodomy statute which stated that "a person commits the offense of sodomy when he performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another" which carried with it a punishment of imprisonment for no less than one nor more than twenty years.⁶⁰ Hardwick brought suit against Michael Bowers, the Attorney General of Georgia in a federal court where he argued that the sodomy law was void. The lower Federal Court sided with Hardwick but the case continued on to the United States Supreme Court because the state wished the decision to be overturned.

The hearing began March 31, 1986, with Hardwick now being represented by Harvard Law School Professor Laurence Tribe. This time however the state would try a different approach from that used in the lower court. Here the state would try to change the statute by stressing the homosexual side of the law. The state wished to turn the law into a law against gay sex despite the fact that the Georgian statute did not distinguish the difference between couples of same or opposite sex. However when the case was

⁵⁸ Peter Irons, "The Courage of Their Convictions," Free Press 1988, 394.

⁵⁹ Kenji Yoshino, "Tribe"; available from <http://img.slate.com/media/29/YoshinoFinalCopy.pdf>; Internet; accessed 27 May 2008.

⁶⁰ Georgia Code Ann. 16-6-2.

brought forward the Senior Assistant Attorney General of Georgia, Michael J. Hobbs made sure to phrase his opening statements to reflect this. His question transformed from whether or not a state's statute was constitutional to "whether or not there is a fundamental right under the Constitution of the United States to engage in consensual private homosexual sodomy."⁶¹ By only focusing on the homosexuality side of the statute, Hobbs played to the emotion that the Court and public had due to AIDS and the taboo idea of homosexuality. He made sure to point out the fact that the statute had never been applied to heterosexual married couples.

Tribe tried a different approach to win over the Justices by showing that both gay and straight couples were in danger if laws like this continued, "The power invoked here...is the power to dictate in the most intimate and, indeed, I must say, embarrassing detail how every adult, married or unmarried, in every bedroom in Georgia will behave in the closest and most intimate personal association with another adult."⁶² His effort did not work out as he had hoped.

The court's decision was rendered on June 30, 1986, holding that the Georgia law which included homosexual sex under its sodomy laws as illegal was valid since there was no constitutionally protected right to engage in homosexual sex. The 5-4 decision argued the "right to privacy" which was protected by the Due Process Clause of the Constitution did not protect homosexual acts of sodomy.⁶³ The "right to privacy" does protect intimate aspects of marriage, procreation and family relationships but not gay sodomy because "no connection between family, marriage or procreation on the one hand

⁶¹ *Bowers v. Hardwick*, 478 U.S. 186 (1986).

⁶² *Ibid.*

⁶³ *Ibid.*

and homosexual activity on the other has been demonstrated.”⁶⁴ Justice Byron White wrote the majority opinion where he stated the Court’s idea on fundamental rights, “Precedent aside, however, respondent would have us announce, as the Court of Appeals did, a fundamental right to engage in homosexual sodomy. This we are quite unwilling to do.”⁶⁵ Justice White finished the opinion discussing the idea of the rationale of the statute,

Even if the conduct at issue here is not a fundamental right, respondent asserts that there must be a rational basis for the law and that there is none in this case other than the presumed belief of a majority of the electorate in Georgia that homosexual sodomy is immoral and unacceptable. This is said to be an inadequate rationale to support the law. The law, however, is constantly based on notion of morality, and if all laws representing essentially moral choices are to be invalidated under the Due Process Clause, the courts will be very busy indeed.⁶⁶

Justice White showed here that homosexuality as an immoral act was enough for the statute to remain; again stressing the sense of morality that controlled the court and legislature. “We do not agree, and are unpersuaded that the sodomy laws of some 25 States should be invalidated on this basis,” was the court’s final decision.⁶⁷ It did not see that neither sodomy nor any homosexual act should be validated under the law.

This was aided with the concurring opinion of Justice Warren Burger who quoted English jurist Sir William Blackstone in declaring sodomy as a “crime not fit to be named.”⁶⁸ He too went on to again reflected the idea that morality and custom still steered members of the court with, “To hold that the act of homosexual sodomy is

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

somehow protected as a fundamental right would be to cast aside millennia of moral teaching.”⁶⁹ Justice Harry Blackmun responded with his dissenting opinion, condemning the decision, stating that “this case is about the most comprehensive of rights and the right most valued by civilized men, namely the right to be let alone...The statute at issue denies individuals the right to decide for themselves whether to engage in particular forms of private, consensual sexual activity.”⁷⁰ Showing sign of reason here, Justice Blackmun, was ahead of the times when he declared that the rights of the individual were denied with their decision. The case was one where gays wished to distinguish themselves and their acts as allowable just as a heterosexual is rightfully allowed to have sex.

The decision, which would constantly be used as a tool against the gay rights’ movement and its programs, only showed that America was still unwilling to fully accept homosexuals and their acts. It seemed to be that people could deal with others being gay as long as it was kept out of the public view but even this proved not to be, even in private the gay lifestyle was beginning to be attacked. The court focused on the gay side of the facts ignoring that oral and anal sex was not restricted to homosexuals. But by disassociating the heterosexual aspect, it allowed Georgia and some members of the Court to make it a decision against gays. The Court did not rule on the heterosexual part of the sodomy statute. Bowers showed that gays were forced to watch the actions again, a very stark contrast to the idea that they learned from the sexual revolution. It further altered how some gays lived their lives.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

But ultimately the decision showed how far the state and federal government could reach into the private lives of the gay individual. The decision reaffirmed the fact that the government could and in the case of *Bowers* would regulate the lives of gays and their practices. This was an especially harsh blow to the community who at this time was still trying to cope with AIDS and how they were to adjust their lives. This further made their lives difficult because even despite AIDS, they had to worry how to try to live their lives even though the general nature of their lives was still illegal in some states.

Despite the disastrous court ruling the community was still facing the issues that AIDS had presented. It was very likely that someone knew someone who had either contracted or died from AIDS. After the evolution from the sexual revolution and Stonewall, the AIDS virus single-handedly changed the landscape of the gay community. From this the gay rights movement although suffered; it adapted and shifted its goals and means. It began in most cases to lose its radical edge and move to a more conservative approach.

Prior to the epidemic the gay community was still lacking unity. Despite their ultimate goal of equal rights, there were a number of issues that separated the various groups. As was seen after Stonewall with the Mattachine Society, GLF and GAA, different groups had different priorities with different methods. The three groups and others tried to draw the community together but could not due to unwillingness, lack of interest as well as race, gender and social class. This all changed when because unlike before with Stonewall which affected only a percentage of the gay population, AIDS had the potential of affecting the entire community.

This fear and concern drew together the community with again a number of groups including ACT UP (AIDS Coalition to Unleash Power). The new groups shifted their focus from rights to awareness and funding, “There are a lot of us now who feel the issue has to switch to social programs and services.”⁷¹ With its inception in 1987, ACT UP New York, took up the radical role of some of the earlier gay groups with its primary mission aimed at empowering those who are living with AIDS and HIV, educating the public about the virus as well as try to “end the AIDS crisis.”⁷² But even from the beginning it did more than talk by going out and becoming the most radical group dealing with AIDS. It demonstrated and publicly protested for the betterment of the whole community who had suffered from the virus. The group satisfied the gay community’s desire for awareness and special programs that would aid in the crisis. It did not hold back in its practices often demonstrating, practicing sit-ins and fax zaps but it was this extreme radicalness that turned away some gays.

New York was particularly hit hard by AIDS. From 1985 – 2002, it was reported that there a cumulative 134, 504 number of cases in New York City.⁷³ Adding in the reported cases from outside the city, New York topped the states as the one with the most AIDS cases. Along with the creation of ACT UP, many other interest groups sprung up in New York actually starting with the Gay Men’s Health Crisis in 1982.⁷⁴ New York Cares and AIDS Walk New York highlighted the more popular groups that tried to raise awareness and bring about change for those who suffered.

⁷¹ Michael Norman, “Homosexuals Confronting a Time of Change” *Daily News*, 6 June 1983, p. A1.

⁷² University of Michigan, “ACT UP Preliminary Position Statement,” available from <http://www.umich.edu/~spp638/Preliminary%20Position/PPS-ACTUP.doc>; Internet; accessed 3 July 2008.

⁷³ NYC Department of Health and Mental Hygiene, “HIV Surveillance & Epidemiology Program Quarterly Report,” available from <http://www.gmhc.org/health/statistics.html>; Internet; accessed 3 July 2008.

⁷⁴ Gay Men’s Health Crisis, “HIV/AIDS Timeline,” available from <http://www.gmhc.org/about/timeline.html>; Internet; accessed on 3 July 2008.

The awareness that groups like ACT UP brought the community helped to humanize the cause. For up until this point, AIDS was still seen as a gay disease but through various demonstrations and the rise of awareness, heterosexuals began to realize that they too were at stake. This motivated the public in its efforts to help the gay community. Though no matter how much help from the outside, the biggest contribution would have to come from the community itself. The creation of such groups showed the first step in this change by how they approached the disease but it was the gay community that needed to change if it wished to survive.

Besides the shift in their approach also came a need for a shift in lifestyle. Stemming from the sexual revolution, the gay lifestyle of promiscuity was placing the community in danger. AIDS seriously put into question the practice of random sex in clubs and bars. As mentioned before the fear of the epidemic quickened the closing of New York City gay baths which were now seen as a health risk. This action by government only made the community more aware of the fact that certain practices must be changed.

Many saw the disease and destruction it had caused as an awakening. The early days of the movement were concerned with sexual freedom rather than long term relationships. Now those participants from the early movement having now grown older and somewhat wiser began to change their ideas especially in light of the AIDS crisis. No longer being young kids looking for fun, these former radicals were now forced to reevaluate their lifestyle.

Although the change was necessary it was easier said than done. A result of the sexual revolution, the community particularly those in New York were forced to create a

public self for themselves through its sexual practices. With this it became very difficult to separate the liberal sexual lifestyle from being gay. For many, being gay became synonymous with the sexual liberation that they embraced after Stonewall and were very resilient in giving it up after only a little more than a decade. To denounce the sexual freedom they had gained and move away from it was a slap in the face of the movement. Sex was seen as a stand against conformity and the rigid society that forced them to exist in their own subculture. "The belief that was handed to me was that sex was liberating and more sex was more liberating. [Being gay] was tied to the right to have sex," said Michael Callen, 28, a New York City AIDS victim in 1983.⁷⁵ Having only been fourteen years old, Callen was too young to be part of the Riots but became a member of the first generation under the movement. Being the generation of homosexuals to follow Stonewall, it was the idea of sexual freedom and liberation that became ingrained in their young minds. But the issue that now arose was whether or not it is possible to separate the liberal sex from the gay lifestyle.

Many gay leaders agreed that as the movement progressed and matured so did the gay lifestyle. As a young movement there was little direction by the majority of the gay population who at last saw their right to be free sexually. They took full advantage of it but as the movement took a stronger hold on the community; it made members realize that it was time to grow within it. Some gay leaders like to point to the fact that even prior to the AIDS crisis, in some cases that the shift had already begun. Gays were turning away from the stereotypical gay lifestyle in the fast lane. "The stereotype of the gay, liberated lifestyle and the reason [gays] are so unpopular with the mainstream is [that gays are regarded as] hedonistic, pleasure-oriented, too irresponsible. I don't think

⁷⁵ Tom Morganthau, "Gay America in Transition," *Newsweek* 8 August 1983, 30.

that's the case," is quoted by a gay author of the day.⁷⁶ He continued to speak about how many began to explore more traditional values and conventional wisdom to see how it could be applied to the gay lifestyle.

These more traditional values and wisdom were seen as a necessity with the death toll that AIDS was taking in the gay community. An ever increasing concern for many gay men was that of long term goals. They shifted from sexual exploration and began concentrating more on family building. Part of family building consisted of the idea of long term relationships, which as many might disagree to, was a part of the gay community. Even before 1981, there existed couples both long and short term but it was after the AIDS crisis and that of herpes that saw a major increase in the number of homosexual couples. For those involved their relationships were legitimate in the sense of it realness but not so in the sense of legality.

For couples, AIDS proved to be an important influence because of the effect it had with its relationship between them and the government. Although the two involved believed their relationship to be a bond of love, it did not translate into a legal course of action. With AIDS devastating the gay community, it became apparent that even those who were involved in serious relationships could be in danger of the virus since its incubation period can last for years before the first signs are seen. So with an increase of illness and death affecting both singles and couples it became a necessary need for certain rights that were natural to the heterosexual world. These rights consisted of basic rights over the significant other which in marriage would secure. Having not being recognized as a legal or legitimate couple in the eyes of institutions such as hospitals, the workplace and both the state and local governments, life as a gay couple was difficult.

⁷⁶ *Ibid.*

By the mid 1980s there were limited rights in place for the protection of the gay relationship or family. In 1981, the New York State's Department of Social Services issued a regulation stating that adoption could not be denied based on a parent's sexual orientation.⁷⁷ A year later, *The Village Voice* became the first business to offer domestic partnership benefits to its employees.⁷⁸ Outside of New York State there was progression with the city of Berkeley, California becoming the first U.S. government body to offer domestic partnership benefits to gay city and school district employees.⁷⁹ Besides individual entities offering some sort of benefit to same-sex couples it was left to them to fend for themselves.

Since there lacked a legal connection between gay couples and the law, many couples began to draw up contracts, wills and powers of attorney to protect themselves in case of the death of a partner. Unlike heterosexual married couples, gay partners are not entitled to take part in the other partner's affair. With the increasing deaths and illnesses caused by AIDS, it came to be that those partners not in a coffin or a hospital had no control over their partner's fate.

Without such contracts and powers of attorney, committed gay couples lacking any real form of unity were forced to gamble, hoping that their partner's family would see to it that their wishes were carried out. Having no legal connection to their partner, gay widows were forced to deal with the death of their partner as if it were a break-up. So the shift toward to long term ideas began to be discussed, among them was an idea of

⁷⁷ Empire State Pride Agenda, "Incremental Steps by the New York State Government"; available from <http://www.prideagenda.org/IssuesExplained/MarriageandFamilyProtection/QuickFacts/IncrementalStepsbytheNewYorkStateGovernment/tabid/198/Default.aspx>; Internet; accessed 29 May 2008.

⁷⁸ NOLO, "Domestic Partnership Benefits"; available from <http://www.nolo.com/article.cfm/ObjectID/86D4108D-25D1-498A-B38AF4AB25F14E84/catID/F896EE61-B80C-4FE1-B1687AC0F07903BA/118/304/ART/>; Internet; accessed 1 June 2008.

⁷⁹ *Ibid.*

marriage. Although the subject of same-sex marriage has been a concept for much longer it seemed to have become a more viable issue during the 1980s. It was this period that AIDS “in retrospect, made same-sex marriage inevitable.”⁸⁰ AIDS created the forum needed for same-sex marriage because it exposed the issues that many gay men especially had known when dealing with a partner with AIDS.

The earliest account of same-sex marriage came in 1969, when the Reverend Elder Troy Perry of the Metropolitan Community Church performed the first public same-sex marriage in the United States in Huntington Park, California.⁸¹ The marriage was ruled void after a lawsuit which also proved to be the first in its attempts to recognize the marriage. This was soon followed by *Baker v. Nelson* (Minnesota 1971); *Jones v. Hallahan* (Kentucky 1973) and *Singer v. Hara* (Washington 1974), where all three cases challenged the respective state’s constitution. *Baker v. Nelson* argued that Minnesota law allowed for the marriage and that denying them would be a violation of their Ninth and Fourteenth Amendments to the United States Constitution. However the Minnesota Supreme Court upheld a lower court’s decision stating that Minnesota’s denial did not violate any US Constitutional right. The case was then petitioned for a hearing before the United States Supreme Court but was dismissed on the merits of the case since the case did not present a substantial federal question. This established precedent in that a state’s decision to prohibit same-sex marriage which did not offend the US Constitution. With this precedent it was then left to the states in deciding the legality of same-sex marriage. This reaffirmed the historical understanding that domestic relations such a legal marriage fall under the domain of the states. The reason that the federal government gives way to

⁸⁰ Frank Rich, “The Joy of Gay Marriage,” *New York Times*, 29 February 2004, sec. 2, p. 1.

⁸¹ John Dart, “The Pastor behind the Gay Marriage Ruling”; available from <http://www.christiancentury.org/article.lasso?id=4857>; Internet; accessed 3 June 2008.

the states when it comes to marriage is because the states regulate themselves when dealing with anything pertaining to local health, safety or welfare. So in this regard the states can deny or allow whomever they desire to marry.

Though these few individuals sought marriage as a way to secure the rights that marriage would afford them, same-sex marriage was not popular during the still sexual exploration period of the movement. "Support for marriage was a distinctly minority position in the gay and lesbian movement," wrote George Chauncey after the first few struggles for same-sex marriage.⁸² He continued to write that "after an initial flurry of activity, marriage virtually disappeared as a goal of the movement."⁸³ However during the period of AIDS, same-sex marriage resurfaced as a solution to the problem of partners being left out of the lives of their respective dying partner. Despite the eighties, especially the second half being the lowest period of support for the legalization of same-sex relations, the movement managed to garner some support of those outside the gay community.⁸⁴ In 1984, the Unitarian Universalist Association, a denomination of the Protestant faith with some 175,000 members at the time, voted to approve religious blessings on homosexual unions.⁸⁵ This was then again followed up the same year when the Metropolitan Community Church performed several same-sex marriages in Syracuse, New York. Following an argument over the action, Reverend Judith Upham, the rector

⁸² Articles by Jonathan Rauch, "Families Forged by Illness"; available from http://www.jonathanrauch.com/jrauch_articles/first_aids_then_marriage_1/index.html; Internet; accessed 8 July 2008.

⁸³ *Ibid.*

⁸⁴ Gallup News Service, "American Attitudes Toward Homosexuality Continue to Become More Tolerant"; available from <http://www.gallup.com/poll/4432/American-Attitudes-Toward-Homosexuality-Continue-Become-More-Tolerant.aspx>; Internet; accessed 9 July 2008.

⁸⁵ "Unitarians Endorse Homosexual Marriages," *New York Times*, 29 June 1984, p. A16.

of the church which was used, stated that there was no such thing as a homosexual marriage but rather a union.⁸⁶

This outside support even by some religious denominations were especially important since it showed that the homosexual right for marriage was now becoming something that had once been seen as impossible to now something possible. This shift in opinion which would ultimately reverse in 1990s was a result of years of struggle and evolution. With the impact of the various radical movements from the 1960s, society's views on commonly held beliefs and institutions such as marriage began to loosen. Marriage further experienced an evolution with the landmark Supreme Court case *Loving v. Virginia* in 1967, which declared Virginia's anti-miscegenation statute unconstitutional thus also, ending all anti-miscegenation laws across the country.⁸⁷ This finally allowed nationwide interracial marriages. *Loving* began a change in the institution of marriage which reflected the changing times in society.

This continued with the idea of how marriage was viewed. During the radical period of the sixties and the leftover into the seventies, marriage was shifting from a necessity of every couple to more of a formality. Affecting the traditional sense of marriage was an increase in divorce and cohabitation with a decrease in the percentage of those who married, starting in the mid to late-1960s.⁸⁸ The divorce rate saw a great increase in mid-1970s which peaked during the early-1980s slowly tapering off to numbers comparable before the increase while the percentage of those who marry

⁸⁶ *Ibid.*

⁸⁷ *Loving v. Virginia*, 388 U.S. 1 (1967).

⁸⁸ Gallup News Service, "Americans have Complex Relationship with Marriage"; available from <http://www.gallup.com/poll/23041/Americans-Complex-Relationship-Marriage.aspx>; Internet; accessed on 8 July 2008.

dropped from 77 percent in 1960 to 59 by 1990.⁸⁹ These statistics reflect the idea that marriage over time has changed into something that is flexible and not as rigidly thought of as before. This transformation was only swayed by the religious connection to marriage.

For many, marriage was defined by the various religious denominations as a formal religious union of a man and woman. This image is seen when people conjure up their image of a white wedding in a large church with a priest administering their vows. However marriage is not religious ceremony but rather “marriage is [also] a relationship between a couple and the government.”⁹⁰ This alone is one of the main arguments for the allowance of same-sex marriage. It is strictly a legal matter with the clergy simply acting as an agent of the state with marriages standing as a civil contract.⁹¹ However those against same-sex marriage still insist that it is a religious ceremony sanctified by God for one man and one woman. But the gay community was not looking to take the ceremony of marriage away from heterosexuals but rather they wish to enjoy in the same rights and privileges that a married couple gain upon entering into marriage. Nancy Langer, director public information for the Lambda Legal Defense and Education Fund explained this idea as early as 1984,

Straights think gay men and women want to co-opt the idea of marriage and make it their own. In fact, the motivation is twofold. One, many people feel the very human need for community recognition of their relationships. Two, we have a need to protect our relationships because we are not able to legally marry. It's not so much that we want the

⁸⁹ United States Census Bureau, “2003 Statistical Abstract”; available from <http://www.census.gov/prod/2004pubs/03statab/vitstat.pdf>; Internet; accessed on 8 July 2008.

⁹⁰ Evan Wolfson, *Why Marriage Matters: America, Equality and Gay People's Right to Marry* (New York: Simone & Schuster, 2004), 4.

⁹¹ Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth Century America* (Chapel Hill: University of North Carolina Press, 1985), 65-68.

legitimacy that marriage affords but the kind of protections it provides automatically.⁹²

But wanting marriage, gays believed that they would secure certain rights and finally be in a legitimate and recognized relationship in the eyes of the government.

Some heterosexuals have misunderstood gays desire for marriage. They have taken for granted the options that marriage has provided them with like the right to make decisions if their partner falls ill as well as the tax benefit of being married. As Jack Baker, of *Baker v. Nelson*, put it, “Whatever rights straight people have, I want too...the institution of marriage has been used by the legal system as a distribution mechanism for many rights and privileges, [which] can be obtained only through a legal marriage.”⁹³

With the increased number of deaths and illness caused by AIDS, homosexual couples realized that marriage was their way to obtain these rights that stood out of their reach.

According to a 2004 report issued by the General Accounting Office there were 1,138 rights and benefits offered to married couples, up from the 1996 report of 1,049.⁹⁴

Among these rights were ones dealing with death, debt, divorce, family leave, health, housing, immigration, taxes, property, insurance and parenting.⁹⁵

A number of these rights became prominent in the 1980s with several court cases and legislations. The most important dealt with that of death and health due to AIDS and other sicknesses. The partner who wished to visit the other while in the hospital was often denied since they were not seen as next of kin. This left many concerned partners outside the hospital room unable to neither see their loved one nor take part in the treatment that they were receiving. This also lead to other complications for the living or

⁹² Georgia Dullea, “Homosexual Couples Find a Quiet Pride,” *New York Times*, 10 December 1984, p. C12.

⁹³ Wolfson, *Why Marriage Matters*, 90.

⁹⁴ *Ibid*, 4.

⁹⁵ Wolfson, *Why Marriage Matters*, 13-15.

healthy partner who often would take time off work so as to mourn and prepare for the funeral. Companies acting much similar to hospital did not see the need to grant time off since they did not see the departed as their partner but rather as a friend.

An important moment in this struggle for gay partnership rights in New York came in the late 1980s. In 1988, when three New York City public school teachers, who were also members of the Lesbian and Gay Teachers Association, sued the City's Board of Education claiming the Board demonstrated discrimination on the basis of sexual orientation.⁹⁶ This claim stemmed from the fact that the Board refused to offer rights available that were available to married couples to employees with domestic partners. Following the lawsuit, Mayor Ed Koch announced an Executive Order that would permit bereavement leave benefits to domestic partners of city employees. Koch's order also established a registration system for domestic partnership through the Department of Personnel.⁹⁷

Among other issues that effected gay partnerships were taxes, property, inheritance and housing. After the death of a partner there was no guarantee that the living partner would be seen as a beneficiary of the deceased especially if there was no will. While alive the couple who shared an apartment was seen as roommates not lovers and for government agencies such as the Internal Revenue Service, same-sex couples were not viewed as a pair but as two separate individuals. In regard to how the two were to be taxed, the IRS would split the cost of the property due to two people living. However when one died the IRS did not see the remaining partner as a widow but rather

⁹⁶ <http://www.nyc.gov/html/records/pdf/govpub/471domesticpartners.pdf>

⁹⁷ New York City Mayoral Executive Order No. 123, 7 August 1989.

the sole proprietor of the property. This fact became very important in New York City especially in regard to public housing.

New York City had always had a high demand for housing especially in regard to rent controlled apartments. Those who were lucky enough to possess one rarely moved, often leaving the property to family members with their passing. At the time a typical co-op proprietary lease written prior to court decisions and legislative changes, restricted occupancy to the leaser and their immediate family members.⁹⁸ This rule and others came under fire with a 1989 court case challenged it with the idea of a live-in partner.

From the summer of 1975 until September of 1986, Miguel Braschi and Leslie Blanchard had resided at a rent-controlled apartment at 405 East 54th Street. In September, Blanchard passed away without a will but believing that he was entitled to apartment Braschi remained living there. In November, Stahl Associates Company, the company who owned the building, issued a notice to Braschi that he had no right to live in the apartment since it was Blanchard's name that was on the lease. The next month, Stahl Associates issued a 30-day eviction notice to Braschi which he challenged by claiming that he should be awarded control of the apartment since he believed that he should be included in the term of "family member" as defined by the rent control regulation.⁹⁹ Braschi argued that his ten year relationship with Blanchard should establish and fulfill the criteria desired by the term family. The Braschi case took three years of prosecution and appeals before the July 6, 1989, decision was made by the New York State Court of Appeals. The agreeing opinion by Judge Vito T. Titone read, "Contrary to all of these arguments, we conclude that the term family, as used in [the

⁹⁸ Jay Zinns. "Rights of Inheritance" *The Cooperator* March 1995.

⁹⁹ *Braschi v. Stahl Associates Company*, New York Court of Appeals, July 6, 1989.

rent-control regulations], should not be rigidly restricted to those people who have formalized their relationship by obtaining, for instance, a marriage certificate or and adoption order.”¹⁰⁰

This did much for the gay community in New York State by altering certain laws and regulations pertaining to housing including the State’s Division of Housing and Community Renewal. All such programs followed suit with the extended meaning of family to include partners who demonstrated a long term committed during which each other created an emotional and financial dependence on the other.¹⁰¹ This reached out to other government agencies to reorganize their rules dealing with families.

The *Braschi* case extended the idea of the family within the context of housing but its lasting effect created a movement for the change of the term in the larger context. The ruling gave hope to those gay couples who believed that same-sex couple rights were far out of reached. It also reawaken the possible idea for an increase of domestic rights and maybe even marriage. This idea quickly spread and in 1990, the first case of same-sex marriage arose in New York.

The case was taken up in the New York Family Court in 1990. With all the hopes that gays had gained from the *Braschi* case, they would soon realize that the victory obtained would not start a favorable gay trend in the courts. When the man in question Cooper died, he left much of his property to his ex-lover, however the suit was brought by his current lover who claimed he should receive the property since he was a surviving spouse.¹⁰² The court ruled in *Re Estate of Cooper*, that “the State has a compelling

¹⁰⁰ *Ibid.*

¹⁰¹ Empire State Pride Agenda. “Incremental Steps by the New York State Government.”

¹⁰² Emily Doshow, “Same-sex Marriage: Developments in the Law”; NOLO; available from <http://www.nolo.com/article.cfm/pg/1/objectId/6DF0766E-C4A3-4952->

interest in fostering the traditional institution of marriage as old and as fundamental as our entire civilization, which institution is deeply rooted and long established in firm and rich societal values.”¹⁰³ The ruling brought forward that same-sex marriage is not authorized by the New York courts and would not recognize gay couples in the same light as married couples. Surviving gay partners whose counterpart had passed away would not be treated as a surviving spouse in court but similar to an ex-lover.

The court’s opinion of the 1990 case still reflected the belief in the long standing sense of morality against homosexuality. It came despite the fact that Americans were more willing to support legalization of homosexual relations by consenting adults by the year of *Braschi*’s ruling. It was reported that the 47% poll during the second week of October 1989 showed a twelve point increase since the one that was conducted a year earlier.¹⁰⁴ This was the highest approval for this action since 1985 when it was reported at 44%.¹⁰⁵ Since then it sharply declined spending time in the low thirties. From 1989, it steadily improved only declining in 1996. Although the increase of support, gays still lacked the support of the majority, who stood with the New York Family Court in believing in the traditional sense of marriage.

Following the change resulting from the *Braschi* case, gay partnership advancement in the state and city of New York remained quiet for three years. However there was a significant court case out of Hawaii in 1993 that would have major implications for the same-sex marriage nationwide. *Baehr v. Lewin* was the first to gain

A542F5997196E8B5/catId/64C2C325-5DAF-4BC8-B4761409BA0187C3/118/304/190/ART/; Internet; accessed 11 July 2008.

¹⁰³ *In re Estate of Cooper*, 564 N.Y.S.2d 684, 688 (New York Family Court 1990).

¹⁰⁴ Gallup, “American Attitudes Toward Homosexuality”; available from <http://www.gallup.com/poll/4432/American-Attitudes-Toward-Homosexuality-Continue-Become-More-Tolerant.aspx>; Internet; accessed 3 June 2008.

¹⁰⁵ *Ibid.*

support from its state's highest court who ruled that a barrier to marriage is discriminatory.¹⁰⁶ This allowed for the movement of marriage to progress however this was quickly shut down by the various appeals that the state issued over the next six years. In 1996, the state brought a new defendant in to the case, believing that a full detailed trial would overturn the previous case. However the new case *Baehr v. Miike*, did not gain the desired effect.¹⁰⁷ Realizing that the state was still required to issue same-sex marriage licenses, it decided not to proceed with another trial but rather change the state constitution. In 1998, Hawaii amended its constitution when it eliminated same-sex couples from the protection of equality allowed by marriage. With the *Baehr v. Miike* case still proceeding in 1999, the case came to a close since the constitution no longer allowed for same-sex marriage. This would over the span of time have great effect on the course of same-sex marriage in other states because like *Bowers*, it showed the reach that a state can take to limit the actions of the gay community.

During this period movement for equal rights again started up in New York, this coming from a legislative initiative on the part of the State Assembly. In 1993, the Assembly with a vote of 90-50 passed an anti-discrimination bill entitled the Sexual Orientation Non-Discrimination Act, known by its acronym SONDA.¹⁰⁸ The bill would have prohibited discrimination on the basis of sexual orientation in employment, housing, public accommodations, education, credit and the exercise of civil rights.¹⁰⁹ These were some of the rights that gays fought for early during the 1970s. While it saw the passage

¹⁰⁶ *Baehr v. Miike*, Supreme Court of the State of Hawaii, December 9, 1999.

¹⁰⁷ *Ibid.*

¹⁰⁸ Empire State Pride Agenda, "Pride Agenda History"; available from <http://www.prideagenda.org/tabid/56/Default.aspx>; Internet; accessed 7 June 2008.

¹⁰⁹ New York State, "The Sexual Orientation Non-Discrimination Act (SONDA)"; available from http://www.oag.state.ny.us/civilrights/sonda_brochure.html; Internet; accessed 10 June 2008.

in the Assembly, SONDA did not make it to the floor of State Senate and would not do so until 2002.

Two years later the struggle for gay rights in New York would suffer another blow this time at the hand of the state's newly appointed Attorney General Dennis C. Vacco. With his first order of business, Vacco removed sexual orientation from a 15-year old anti-discrimination policy in the office of the Attorney General or the New York Department of Law.¹¹⁰ The policy was first issued in March 1980 by Robert Abrams, then Attorney General, which secured job protection within the Law Department.¹¹¹ The order was renewed in May 1994 by Abrams successor, G. Oliver Koppell.¹¹² The initial policy was seen as a welcome since Governor Mario M. Cuomo's Executive Order in 1983, which was similar to the policy, did not cover the Law Department. In defense of his removal of the policy, Vacco claimed that he had simply matched the policy of the Law Department to that of the state's human rights law which did not include sexual orientation.¹¹³ Others saw the removal as an insult to the gay community because it showed that Vacco did not believe protecting gays from discrimination was an important priority for his office. The removal showed that although the general public was in favor of protection against gay discrimination, the man in charge of enforcing such rights did not. It showed gays that even rights they had fought could still be challenged and changed.

¹¹⁰ Daily News, "Higher Standards, Better Results"; available from http://www.nydailynews.com/archives/opinions/1995/02/04/1995-02-04_higher_standards_better_res.html; Internet; accessed 10 July 2008.

¹¹¹ David W. Dunlap, "Vacco Plans to Halt Curb on Gay Bias"; available from <http://query.nytimes.com/gst/fullpage.html?res=990CE2D61238F932A35751C0A963958260>; Internet; accessed 8 July 2008.

¹¹² *Ibid.*

¹¹³ *Ibid.*

After much discussion in the closing days of the Cuomo administration, an agreement was met concerning the new contract for state workers thus preserving the domestic partner benefits. This was necessary because some feared that in-coming governor; George Pataki would have opposed these benefits. In the end it was not Pataki who opposed it but new State Senate Majority Leader Joseph Bruno, who by his decision in decreasing such benefits to Senate employees, made the Senate the only state branch not to provide such benefits.

The new governor proved to be more dependable than previously thought when in 1996, he reaffirmed the New York State Executive Order No. 28.¹¹⁴ The Order was first issued by Governor Cuomo in 1993 which banned discrimination on the basis of sexual orientation in any matter relating to employment by the State.¹¹⁵ It showed them that under Governor Pataki possibly more strides could be made for equality. The renewal also helped those who were still reeling from Attorney General Vacco's removal of a similar policy.

During the same year another gay couple would challenge New York State's policy on same-sex marriage when a case was brought forward by Phillip Storrs and his partner against Julie Holcomb, an Ithaca City Clerk. The two men went to apply for a marriage license in Tompkins County but were denied by Holcomb, citing that she had received a directive from the State Department of Health which stated that marriage licenses could not be given to two person of the same-sex.¹¹⁶ The two men argued in the

¹¹⁴ Empire State Pride Agenda Press Release, "Gay Rights Lobby Welcomes Pataki Reissue of Order Banning Discrimination: Governor's OK an important victory for Lesbian and Gay community" 2 May 1996.

¹¹⁵ New York State Gubernatorial Executive Order No. 28, 1993.

¹¹⁶ *Storrs v. Holcomb*. Supreme Court of New York, Appellate Division, Third Department. 245 A.D. 2d 943; 666 N.Y.S.2d 835; 1997 N.Y. App. Div.

lower courts that the denial of the marriage license was a violation of their constitutional rights. The Supreme Court of New York, Tompkins County ruled that the clerk was right to deny them a license since the state does not provide for same-sex marriage. The right to marry by opposite sex couples was protected by the United States Constitution; Amendment XIV by the due process clause did not apply to same-sex couples. For same-sex couples who claimed that marriage was entitled to them by the Constitution, they would find a difficult road in the courts. Courts would allow such a ruling if same-sex marriage was protected by the Constitution or a fundamental right and since homosexuality is not protected by a fundamental right thus neither is marriage. No New York court was willing to take the step in creating such precedent by declaring the right for same-sex couples to marry a fundamental right.

The exact same sentiment was shown in Justice Walter J. Relihan's opinion, "The long tradition of marriage, understood as the union of male and female, testifies to a contrary political, cultural, religious and legal consensus."¹¹⁷ Justice Relihan also stated that the court would refrain from identifying "a new fundamental right, in the absence of a clear direction from the Court whose precedents we are bound to follow."¹¹⁸ However there was some hope when Justice Relihan admitted that maybe in the future with the changes in society that the rights reserved to married couples would be extended to same-sex couples. The couple then sought an appeal which the Appellate Court dismissed. On December 24, 1997, a declaratory judgment action was entered and dismissed the same day due to the fact that did not include the Department of Health, who would have played an important part in the case.

¹¹⁷*Storrs v. Holcomb*. Supreme Court of New York, Tompkins County. 168 Misc. 2d 898; 645 N.Y.S. 2d 286; 1996 N.Y.

¹¹⁸*Quill v. Vacco*, 80 F.3d 716, 725.

During the time between the trial court and the appellate court for the *Storrs v. Holcomb* case, there occurred important piece of federal legislation that would effect the whole same-sex marriage movement in America. Under the presidency of Bill Clinton, who the gay community felt was a favorable candidate for them when they supported him for a second term in 1996, oversaw the passage of the Defense of Marriage Act (DOMA) on September 21, 1996.¹¹⁹ It raised the question of whether or not gays would ever be allowed to marry legally in America.

The would-be bill was introduced on May 7, 1996, by House of Representatives Republicans: Bob Barr, Steve Largent, Jim Sensenbrenner, Sue Myrick, Ed Bryant and Bill Emerson along with two Democrats: Harold Volkmer and Ike Skelton, both of Missouri.¹²⁰ The DOMA bill accomplished two goals as it read in the bill, “First, it provides that no State shall be required to give effect to a law of any other State with respect to a same-sex “marriage.” Second, it defined the words “marriage” and “spouse” for purpose of Federal law.”¹²¹

The first part of DOMA dealt with the powers that are accorded the states. Section 2 read,

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.¹²²

¹¹⁹ DOMAwatch; “Federal Defense of Marriage Act (DOMA)”;
<http://www.domawatch.org/about/federaldoma.html>; Internet; accessed 10 June 2008.

¹²⁰ ‘Lectric Law Library, “United States Congress. Defense of Marriage Act. Washington: H.R. 3396”;
available from <http://www.lectlaw.com/files/leg23.htm>; Internet; accessed 10 July 2008.

¹²¹ *Ibid.*

¹²² *Ibid.*

This made it clear that a state need not recognize a same-sex marriage as legal even though performed in another state that may allow it. Section 2 also amended the first part of chapter 115 of title 28, United States Code while Section 3 sought to define the word marriage as it is seen in the federal government's eye. Marriage according to the bill "means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."¹²³ This section also amended another United State Code: chapter 1 of title 1.

The bill saw a short time in the Committee on the Judiciary, Subcommittee on the Constitution. It passed through the House of Representatives on July 12, 1996 with an overwhelming vote of 342 – 67 with twenty-four abstaining.¹²⁴ Of the two hundred and thirty-four Republicans only one voted nay with nine casting no vote. It was a much similar passage in the Republican controlled Senate with an 86-14 margin with one nay vote on September 10th.¹²⁵ The bill became law on September 21, 1996 with the signature of President Clinton.

As to the reason for DOMA, Congress pointed to the pressure it had been feeling for years especially in recent ones when the traditional institution of marriage came under fire with *Baehr v. Miike*. DOMA came in the light of the second defeat suffered in Hawaii's attempt to block same-sex marriage. The Hawaii State Supreme Court's call for substantial proof in denying same-sex marriage compelled many of those against it to move toward action. The Hawaiian decision left open the possibility of a state allowing

¹²³ *Ibid.*

¹²⁴ United States House of Representatives Clerk, "Final Vote Results for Roll Call 316"; available from <http://clerk.house.gov/evs/1996/roll316.xml>; Internet; accessed 11 June 2008.

¹²⁵ United States: Legislation & Records, "U.S. Senate Roll Call Votes 104th Congress – 2nd Session", available from http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=104&session=2&vote=00280#top; Internet; accessed 11 June 2008.

same-sex marriage which would possibly leave open the chance for others to follow. Congress, rather than wait for the court to render a final decision, moved forward and put in place such prevention. Congress believed that it was in its best interest to strengthen marriage with a federal legislation that would reaffirm the sanctity and morality of marriage.

DOMA came under heavy scrutiny even while only a bill for various reasons. Besides the denial of same-sex marriage, the new law was seen as unconstitutional in a number of ways. The bill asserted the authority that Congress possessed under Article IV Section 1, the full faith and credit clause which would have allowed Congress to order how the relationship is to be despite each state's ability to act within its own frame to deal with another state. This became a target of opposition since many argued that Congress overreached its boundaries when pertaining to the full faith and credit clause. They believed that it was an excess of power on Congress' part and questioned if the clause was properly used in DOMA. Critics also point to two other clauses both part of the Fourteenth Amendment: Equal Protection and Due Process.

The Equal Protection Clause protected citizens from the state and its abuse of powers. It provided protection under the state law within the state's jurisdiction. Critics say that DOMA discriminated against gay couples and their right for equal protection under their respective state governments. The Due Process Clause of the Fourteenth Amendment stressed the fact that no state can deny certain rights to its citizens. Supporters of same-sex marriage argued that the Due Process Clause is being violated since DOMA deprives gay couples of their fundamental right to marry.

The idea of same-sex marriage as a fundamental right is one which has troubled the courts and states over time. It had been mentioned in previous courts in which it was denied while the courts have refrained from establishing same-sex marriage as a fundamental right. Representative Barr of Georgia echoed the Court's opinion of *In re Estate of Cooper* during his speech introducing the bill, "The second substantive section of the bill amends the U.S. Code to make explicit what has been understood under federal law for 200 years; that a marriage is the legal union of a man and a woman as husband and wife."¹²⁶ Since same-sex marriage has only become a recent topic in contrast to the history of the United States, many refrain in assigning it as a fundamental or natural right. People saw it as something that is new and thus not holding enough tradition and history to be fundamental or natural.

The bill also broke a tradition commonly held between the federal and state government in that the federal government has in the past left the state to handle its own domestic relations including legal marriages. The state could then define marriage as it pleased with the definition that the federal government would adhere to when dealing with that state. This was seen in the 1960s with interracial marriages with the Federal government dealing with each individual state since certain states allowed them while others did not. However DOMA changed that when it took it upon itself to put a definition to the word. With its passage, DOMA negated this by establishing the fact that no act or agency of the Federal government could recognize same-sex marriage.

As for its effect on the gay community, they were monumental; DOMA did damage to the movement for marriage since it now restricted states in their capability of recognizing other states. It also created the precedent for Federal government who would

¹²⁶ "Defense of Marriage Act."

not recognize a marriage between members of the same sex. It like *Bowers* and *Vacco*'s reversal showed even as the movement progressed that the power laid with those in charge. It showed how the Federal government could regulate gay marriage and even how it would be dealt with interstate. DOMA was the government's way of to prove that gay marriage was not recognized or wanted by it. It restricted the fundamental right of marriage from those who only wanted the rights that could be provided to them through marriage. DOMA also had a major impact on the public's view of homosexuals. For the first time since 1987 had the public's opinion of homosexuals and their relationships been viewed by the majority in a negative way. It was an almost exact switch from the Gallup poll reported from 1992 where 48 percent believed that homosexual relations should be legal to 47 percent in 1996 who believed that it should not be legal.¹²⁷

For gays in New York, DOMA was difficult to deal with who now saw an even more restrictive force on their struggle for marriage. With marriage looking again like something out of reach, they could find some solace in other advancement in their overall rights. The first action came in 1997, when the Assembly Majority were able to secure funds for the first time to be used for Gay, Lesbian, Bisexual and Transgender health and human services. However due to the late adoption of budget the money was not awarded but this did show the improvement that gay health care was finally becoming an increasing topic, though years after the initial wave of AIDS. Again in 1998, it was the Assembly that attempted another preparation of funds for gay health services. This time the FY 1998-99 budget was to set aside \$2 million dollars a one million dollar increase

¹²⁷ Gallup News Services, "Some Change Over Time in American Attitudes towards Homosexuality, but Negativity Remains"; available from <http://www.gallup.com/poll/4045/Some-Change-Over-Time-American-Attitudes-towards-Homosexuality.aspx>; Internet; accessed 10 July 2008.

from the prior year.¹²⁸ After Governor Pataki used his item line veto to remove it from the budget, he came under much criticism especially from that of gay rights group, The Pride Agenda. Pataki soon gave in and made \$1 million dollars available which would set a precedent for funds to be available for gay health services.

In the same year the Georgia case, *Powell v. State of Georgia* challenged and struck down one prior ruling that put fear into the gay community. The case had nothing to do with the same-sex marriage argument but it did strike down a bump in the road. Anthony San Juan Powell was charged with rape and aggravated sodomy of his wife's seventeen-year-old niece. They acquitted him of rape and aggravated sodomy charges after believing his testimony over the girl's, but was still found him guilty of sodomy.¹²⁹ Powell appealed the decision citing that criminalizing sodomy committed by consenting adults in private was an unconstitutional invasion of privacy that the Georgia Constitution guaranteed him.¹³⁰ The Court concluded that "insofar as it criminalizes the performance of private, unforced, non-commercial acts of sexual intimacy between persons legally able to consent, "manifestly infringes upon a constitutional provision" (*Miller v. State*, supra, 266 Ga. 850 (2)) which guarantees to the citizens of Georgia the right of privacy."¹³¹ The court reversed Powell's conviction by striking down the same sodomy law which *Bowers* upheld. Although this did not repeal or overturn *Bowers*, it did show that there was a progression in the courts that stepped away from the moral implications of the case to more of a focus on legal issues. It also showed that the courts possibly were loosening up on the sodomy laws which were a strong opposition to their movement.

¹²⁸ Empire State Pride Agenda, "Pride Agenda History".

¹²⁹ *Powell v. The State of Georgia*, Supreme Court of Georgia 270 Ga. 327 (1998).

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

However the sweetest sounding news for gay New Yorkers was when a promise was fulfilled. On October 17, 1997, Richard Dadey, Jr., the Executive Director of the Empire State Pride Agenda, Inc. received a letter from Mayor Rudy Giuliani which promised to extend the rights offered to registered domestic partners.¹³² Giuliani kept this promise when he signed into law a legislation that increased the benefits of domestic partners in New York City on July 7, 1998.¹³³ This act also codified two previous executive orders issued by Mayor David Dinkins in 1993. One order created the registry which established the methods for registration and termination of the partnership while the other added unpaid childcare leave to the domestic partner employee health benefits.¹³⁴ That same year Mayor Dinkins also called for the City to start providing health, dental and hospital benefits to the domestic partners of City employees. Dinkins' passage of the executive orders followed the 1988 lawsuit brought by the Lesbian and Gay Teachers Association which was decided in 1993, which allowed bereavement leave for domestic partners. Giuliani on the other hand had been approached by the Pride Agenda who had been waging the war over the improvement of domestic partners' rights for nearly a decade.

The newly signed Domestic Partnership Bill established a more structural and formal process much similar to that of marriage. It was now under the responsibility of the Clerk's Department within the Marriage Bureau. The bill established certain requirements for the applicants such as age and residency as well as included the rights awarded to and deprived from the partners. Included were now rights that extended to

¹³² Rudy Giuliani. Letter to Richard Dadey, Jr. 17 October 1997.

¹³³ Empire State Pride Agenda, "New York City Takes Historic Step on Domestic Partnership"; available from http://www.columbia.akkadns.net/cu/gables/dpinfo_nyc/espa_pressrelease_1998-07-08.html; Internet; accessed 11 June 2008.

¹³⁴ New York City Mayoral Executive Order No. 49, 7 January 1993.

mayoral awards to partners of city workers who died while on duty. Those that were excluded were the use of equitable estoppel to enforce parental rights, the right to maintain action in partition or division of property under the legal framework of a marriage as well as the rights that are inherent in martial residences.¹³⁵ This bill was a great improvement in the lives of homosexuals in New York City who were now saw an opportunity to improve their rights as well as gain some sort of recognition legally speaking to their partner.

With the passage of the Sexual Assault Reform Act in 2000, New Yorkers saw a revamping of many of the state's sex crime laws. The October 10th passage formally repealed New York State's one-hundred and fifty year old consensual sodomy law. The sodomy law had been ruled unconstitutional in the *People v. Onofre* but was not officially removed. "It's getting rid of the last vestige of criminalization of homosexual behavior," speaking of the repeal by executive director of the Empire State Pride Agenda, Matt Foreman.¹³⁶ The law took effect on February 1, 2001.

That following year with the tragedy of the attacks on the World Trade Center buildings, New York City took a step and realized the importance of family and those that were left widowed or saw a loved one taken from them. In a well thought move, Governor Pataki in October expanded his Executive Order of 2002, making it permanent for domestic partners to seek governmental relief through the state's Crime Victims Board for both 9/11 victims and all other crime victims.¹³⁷ The wave of sympathy

¹³⁵ New York City Clerk's Office, "Domestic Partnership Registration"; available from http://www.cityclerk.nyc.gov/html/marriage/domestic_partnership_reg.shtml; Internet; accessed 12 June 2008.

¹³⁶ Richard Perez-Pena, "Political Notebook; In Legislature, Vulnerable Members of the Majority Get Results," *New York Times*, 28 June 2000.

¹³⁷ Empire State Pride Agenda, "Incremental Steps by the New York State Government".

continued with the New York State's World Trade Center Relief Fund offering the same applications for relief as those of surviving spouses. Legislation continued into 2002, in which 9/11 domestic partners gained an equal footing similar to married spouses in regard to how they were treated by certain agencies and groups.

The following year, 2003, was one of much action on the front of gay rights and especially that of same-sex marriage. Beginning the year on January 16, after years of trying, SONDA was finally passed on December 17, 2002 with a close vote of 34-26.¹³⁸ Gay New Yorkers could now revel with a sense of accomplishment by their own state government in securing them equal protection but it was two out of state court cases that would truly have a lasting effect.

Of the two court cases the first one to be discussed was brought to court while the other more important had already begun its litigation. On September 17, 1998, Harris County Sheriff's Deputy Joseph Quinn entered the home of John Geddes Lawrence's apartment located outside of Houston, Texas, to investigate a call. Upon entering Deputy Quinn found Lawrence and Tyron Garner engaged in consensual anal sex, seeing this, he arrested the two men for violating Texas' anti-sodomy statute which was also labeled the Texas "Homosexual Conduct" law. The code read, "A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex."¹³⁹ The statute continued on by defining "deviate sexual intercourse" as "any contact between any part of the genitals of one person and the mouth or anus of another person or the penetration of the genitals or the anus of another person with an object."¹⁴⁰

¹³⁸ *Ibid*, "Pride Agenda History".

¹³⁹ Texas Penal Code Ann. 21.06(a) (2003).

¹⁴⁰ *Ibid*.

It was later reported that a neighbor, who had harassed Lawrence in the past as well as being romantically linked to Garner, filed a false report. Despite this, the question of probable cause in entering the home was never brought to argument during the trial. After being convicted during a November trial, the two men sought another trial asking that their charges be dismissed due to its violation of the Fourteenth Amendment's Equal Protection Clause since the law only outlawed same-sex sodomy and not heterosexual sodomy. They also appealed on the grounds of their right to privacy.

At the Texas Fourteenth Court of Appeals, it ruled in favor of Lawrence and Garner that the law was unconstitutional but the full court decided against this; resulting in a further appeal process. It was then sent to the Texas Court of Criminal Appeals on April 13, 2001, but it denied reviewing the petition. Without any higher to go within the state of Texas, the issue made its way to the United States Supreme Court.

The case was to be heard on December 2, 2002, after the Court granted the writ of certiorari. There were three questions that the Supreme Court was faced with and their answers could sway the decision of the case. The first was whether or not the conviction under the Texas law was a violation of the Fourteenth Amendment guarantee of equal protection of the law.¹⁴¹ The second dealt with the question of privacy and if the Due Process Clause of the Fourteenth Amendment protected two consenting adults' sexual acts while in the privacy of their own home.¹⁴² The final question was if the decision of *Bowers v. Hardwick* should be overturned.¹⁴³ These questions would prove to very important for the gay community since answered in the affirmative would create a sense of relief for them whose acts would gain protection. For all the government protections,

¹⁴¹ *Lawrence v. Texas*, 539 U.S. 558 (2003).

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

none until this point protected gay sex acts. Unfortunately none were a question of the validity of homosexuality but to know that the Supreme Court would favor them in case was enough in itself.

For gays there was hope for favorable decisions since thirteen states still had sodomy laws on the books with four actually enforcing them only against homosexuals.¹⁴⁴ In these states a change in law would help remove the stigma that the laws placed on their sexual acts. They and their sexual practices would no longer be seen as criminals and criminal behavior. It would create a sense of normalcy for gays who would not have to be private of their expressions for each other in fear of imprisonment.

These three important questions were answered on June 26, 2003. In answer to the first, only Justice Sandra Day O'Connor agreed that it violated the equal protection while five other justices sided with the second question. The vote to strike down the Texas law was thus a 6-3 margin. The court's ruling in turn struck down the Georgia sodomy law that was upheld in *Bowers*, thus overturning the 1986 court case. The Supreme Court's decision read,

Bowers was not correct when it was decided, is not correct today, and is hereby overruled. This case does not involve minors, persons who might be injured or coerced, those who might not easily refuse consent, or public conduct or prostitution. It does involve two adults who, with full and mutual consent, engaged in sexual practices common to a homosexual lifestyle. Petitioners' right to liberty under the Due Process Clause gives them the full right to engage in private conduct without government intervention. *Casey, supra*, at 847. The Texas statute furthers no legitimate state interest which can justify its intrusion into the individual's personal and private life.¹⁴⁵

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

Justice Anthony M. Kennedy wrote the majority opinion where he spoke about the history of both *Bowers* and sodomy laws. Justice Kennedy cited Chief Justice Burger's further explanation on his opinion from *Bowers*, "Decisions of individuals relating to homosexual conduct have been subject to state intervention throughout the history of Western civilization. Condemnation of those practices is firmly rooted in Judeo-Christian moral and ethical standards."¹⁴⁶ This echoed the history of America's founding which relied upon a Christian set of morals that is still used to regulate and enforce laws that are outdated and unneeded. He also went to speak of how certain sodomy laws although usually seen as a minor offense, stigmatizes the person as a criminal, demeaning the individual of their personal lifestyle.

In his dissenting opinion, Justice Antonin Scalia wrote, "Today's opinion is the product of a Court, which is the product of a law-profession culture, that has largely signed on to the so-called homosexual agenda, by which I mean the agenda promoted by some homosexual activists directed at eliminating the moral opprobrium that has traditionally attached to homosexual conduct."¹⁴⁷ This opinion played to those who felt that the liberal lawyer profession was siding with the immoral homosexual movement and was stepping away from their ethical upbringing. This proved to be another fight that homosexuals had to deal with; the fact that even in victory, further criticism was found.

In a separate dissenting opinion, Justice Clarence Thomas admitted that the Texas law "is uncommonly silly."¹⁴⁸ He continued, "If I were a member of the Texas Legislature, I would vote to repeal it. Punishing someone for expressing his sexual preference through noncommercial consensual conduct with another adult does not

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

¹⁴⁸ *Griswold v. Connecticut*, 381 U. S. 479, 527 (1965) (Stewart, J., dissenting).

appear to be a worthy way to expend valuable law enforcement resources.”¹⁴⁹ Despite this, Justice Thomas added that he could not vote to strike down the law, citing Justice Stewart from *Griswold v. Connecticut* that, “I can find [neither in the Bill of Rights nor any other part of the Constitution a] general right of privacy.”¹⁵⁰

This monumental case had many significant results for both the gay and straight community. In a Harvard Law Review, co-counsel Tribe, wrote that the case “may well be remembered as the *Brown v. Board of Education* of gay and lesbian America.”¹⁵¹ The reason for such a grand comparison was that *Lawrence* proved that homosexuals were entitled to the same constitutional rights as heterosexuals. It showed that the Supreme Court has not ruled in defense of morality but that of legal unbiasedness of the issues. The Supreme Court also acknowledged that it was wrong when it ruled on *Bowers*. By admitting this and their decision from *Lawrence*, the Supreme Court instantly repealed the remaining thirteen states’ sodomy laws. With *Lawrence*, sodomy lost its sense of synonymy with homosexuality.

The case however had a broader significance to the gay movement with its regard to same-sex marriage. Many proponents saw this as a huge step forward, as a gateway for same-sex marriage since simply because of its reasoning; *Lawrence* did not separate based on sexual orientation. Here proponents believed that by joining homo- and heterosexuals together that a fight for same-sex marriage could be seen as a possibility. This is so because in striking down sodomy as an offense, the courts chose to include a non-procreative sexual act as a legal form of expression.

¹⁴⁹ *Lawrence v. Texas*.

¹⁵⁰ *Griswold v. Connecticut*.

¹⁵¹ Laurence H. Tribe, “*Lawrence v. Texas*: The ‘Fundamental Right’ That Dare Not Speak Its Name,” *Harvard Law Review*, 117:1894-95 (2004).

However it did show that some members of the Supreme Court were not ready for same-sex marriage. This hesitancy can be seen in the majority opinion by Justice Kennedy and Justice O'Connor's concurring opinion. Both reassure opponents that this allowed the lifestyle but in no way did it force the government to grant formal credit to gay relationships. They also expressed their concern for preserving the traditional institution of marriage. Fortunately this did not stop those gay couples from trying to test their state's constitutions.

The ruling from *Lawrence* did not do much for New York homosexuals since the sodomy law was repealed years earlier but it did give them hope. They saw this as a step closer in their fight for equal rights through marriage. Also adding to this hope was a Massachusetts court case, which dealt with same-sex marriage, which started before *Lawrence*. Having seen a favorable decision in *Lawrence* where homosexuality was no longer ruled as criminal, many gays including those from New York hoped that this ruling would carry over in Massachusetts for a victory.

The Massachusetts case, *Goodridge v. Department of Public Health*, which was brought forward by seven gay and lesbian couples who were denied marriage licenses from their respective local city or town halls, began on March 4, 2003.¹⁵² Before the Massachusetts Supreme Judicial Court the plaintiffs asked for the state to declare their right to marry under the state's constitution. The Massachusetts Department of Health was thus chosen as defendant since it was the department's responsibility to enforce state laws pertaining to marriage. The case made its way through the system when the issue was first brought by the plaintiffs in April 2001.¹⁵³ Gay & Lesbian Advocates &

¹⁵² *Goodridge v. Department of Health*, 798 N.E.2d 941 (Massachusetts 2003).

¹⁵³ *Ibid.*

Defenders (GLAD), who represented the plaintiffs, argued that the Massachusetts State Constitution allowed for same-sex marriage since one of its core principles was not creating second-class citizens.

The Supreme Judicial Court agreed on November 18, 2003, when it handed down its decision to grant marriage. The Court ruled,

We construe civil marriage to mean the voluntary union of two persons as spouses, to the exclusion of all others. This reformulation redresses the plaintiffs' constitutional injury and furthers the aim of marriage to promote stable, exclusive relationships. It advances the two legitimate State interests the department has identified: providing a stable setting for child rearing and conserving State resources. It leaves intact the Legislature's board discretion to regulate marriage... We declare that barring an individual from the protections, benefits and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts Constitution.¹⁵⁴

The Court ordered that the licenses be issued but also allowed the Legislature 180 days to take action that it deemed fit with consideration to the opinion.

The following period was full of emotion for all. On the side of the gay community was excitement and relief for they had finally succeeded in securing themselves marriage, equal in name and rights as that of opposite-sex couples. It was a sign of fulfillment of years of work and effort on the part of so many. The gay community believed that it had achieved something great in only a matter of some forty years from the beginning of the modern-day movement. The ruling finally legitimized a long-term gay relationship in the eyes of a state's government. Gays were also delighted

¹⁵⁴ *Ibid.*

in hearing from the Court that a gay marriage would not “trivialize or destroy the institution of marriage.”¹⁵⁵

There was also emotion on the side of opponents who now hurried to use the 180 days to try and stop the issuing of licenses. The legislature did not know how to respond, since it was spilt in its decision. Some wanted the ruling to stand while others believed that two individuals of the same-sex should not be married. A few others believed that a civil union much similar to the granted in Vermont’s groundbreaking 1999 case, *Baker v. State of Vermont*, would be agreeable with the Court’s decision.¹⁵⁶ Since it could not decide for itself, the legislature asked for an advisory opinion from the Court. The answer from the Court stated that only marriage would suffice.

The legislature met on February 11, 2004, to consider a number of constitutional amendments in regards to *Goodridge*. One month later it reconvened and approved a proposition banning gay marriage but instituting civil unions.¹⁵⁷ However this proposal could not stop gay and lesbian couples from obtaining marriage licenses on May 17, 2004, the first time in America’s history.¹⁵⁸ Still trying to balk the marriage craze, Republican Governor Mitt Romney invoked a law from 1913 which originally prohibited out-of-state interracial couples from marrying within the state. The Court did rule in favor of this but only with those states that banned same-sex marriage. The initial proposal was voted

¹⁵⁵ *Ibid.*

¹⁵⁶ *Baker v. State (98-032)*, Supreme Court of Vermont, December 20, 1999.

¹⁵⁷ Doshow, “Same-Sex Marriage”, NOLO.

¹⁵⁸ Lambda Legal, “Goodridge v. Department of Health”; available from <http://www.lambdalegal.org/our-work/in-court/cases/goodridge-v-department-of.html>; Internet; accessed on 11 July 2008.

down in September 2005, but a number of legislators continued their fight against *Goodridge*.¹⁵⁹

There was another proposal to ban same-sex marriage, this time it did not include civil union and only required 50 members' support to pass. In January 2007, it received the required number of votes but failed later that year in June. For the time being gay couples could marry in Massachusetts safely until 2012, the next available time for a referendum on the issued could be held. With nothing the legislature could do, gay couples across the state continued to marry with opponents only consolation was that the Massachusetts' marriages were not recognized by the federal government due to DOMA. The marriages within the state were only recognized by the state itself and those other states that accepted the marriage licenses. Despite this many proponents still felt that *Goodridge* was a major victory believing that other states would follow.

However during the trial, there effectively could have been put in place a piece of federal legislation that would have made a further exclusion of same-sex marriage a firm possibility. On Capitol Hill, the Republican controlled Congress introduced the Marriage Protection Act in 2003, under President George W. Bush. The bill would amend the Federal judicial code to deny Federal courts jurisdiction to hear or decide any question pertaining to the interpretation of both the provision of the Defense of Marriage Act and the bill itself.¹⁶⁰ It was originally introduced October 16, 2003, by Republican John Hostettler as The Marriage Protection Bill of 2004. The bill was passed in the House but died in the Senate on at the end of the term. Hostettler again introduced the bill this time

¹⁵⁹ Raphael Lewis, "After vote, both side in debate energized"; Boston Globe; available from http://www.boston.com/news/local/massachusetts/articles/2005/09/15/after_vote_both_sides_in_debate_energized/; Internet; accessed on 11 July 2008.

¹⁶⁰ H.R. 3313 [108th]: Marriage Protection Act of 2004

not making it out of the House.¹⁶¹ However during the 109th Congress session, the bill was brought up four more times but either failed to move on or died at the end of the session.¹⁶² Not wishing to give up, the cosponsors of bill tried again with Republican Dan Burton of Indiana as the lead sponsor introducing it on January 20, 2007, where there has been no action of the bill.¹⁶³

The Marriage Protection Act had come under heavy scrutiny because many saw it as unconstitutional. “Even some anti-same-sex marriage Republicans have conceded that DOMA may be well be unconstitutional,” wrote Joanna Grossman, member of Hofstra Law School faculty.¹⁶⁴ This fear has pushed the Republicans to try and pass the Marriage Protection Act numerous times. They fear that a court will eventual have to decide where DOMA is the main question and that with this, the law will be struck down. But in trying to prevent such an event from occurring, the Republicans might have overstepped their power with such a bill that would deny the courts a right to hear any case involving DOMA or the Marriage Protection Act. Congress, under the Constitution, can pass such “exceptions” that even the Supreme Court’s appellate jurisdiction is left powerless.¹⁶⁵ This is also believed by members in Congress who have not allowed the bill to pass any further than the House.

The attempted passage of the bill showed that the old guard who still remained in Congress feared that same-sex marriage was gaining momentum. While the first bill was

¹⁶¹ GovTrack.org, “Bill Search- Marriage Protection Act”, available from <http://www.govtrack.us/congress/billsearch.xpd?PostFormID=billsearch&AutoPostBackField=&AutoPostBackValue=&AutoPostBackState=&q=marriage+protection+act&session=109&chamber=&status=>; Internet; accessed 12 June 2008.

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ Joanna Grossman. “The Proposed Marriage Protection Act: Why It May Be Unconstitutional”. FindLaw.com, available from <http://writ.news.findlaw.com/grossman/20040727.html>; Internet; accessed 11 June 2008.

¹⁶⁵ *Ibid.*

introduced, *Goodridge* was still being heard by the Massachusetts Supreme Court. The bill mostly came as a reaction to this case and as well as the decision from *Lawrence* which did not deem homosexual acts as criminal. The bill was a far-reaching attempt to curb and prevent same-sex marriage and if passed would have created something similar to that of the times when it was illegal for interracial couples to marry. It would have accomplished a goal of preventing individuals from marrying simply because the person they chose to love did not fit in with society's beliefs. It would have created more tension by showing how far the government could reach into the private lives of its citizens.

Despite this, the bill had failed numerous times but during 2003, it was not a time of worry for gays even those in New York who rejoicing the decision of *Goodridge*. Some even took it a step further by going to Massachusetts to get married. For those that did not go, they hoped that the Massachusetts ruling would convince the New York courts to do the same. But in some parts of the state a formal ruling was not needed when some local officials began performing same-sex marriages. It first began in the small college town of New Paltz, located some seventy-five miles north of Manhattan, when Mayor Jason West believed it was his "moral obligation" to issue marriage licenses to gay couples.¹⁶⁶ However being a public official, West knew that he could not actually issue marriage licenses but continued anyway. Within hours after performing twenty-five weddings, West was charged with nineteen counts of violating New York State law by

¹⁶⁶ Jonathan Wald, "New York Town's Mayor Marries Same-sex Couples," CNN.com; available from <http://www.cnn.com/2004/US/Northeast/02/27/ny.samesex.marriage/index.html>; Internet; accessed 14 June 2008.

performing the weddings without licenses.¹⁶⁷ The charges were subsequently dropped but West was ordered not to perform another marriage. This did not stop the movement when two Unitarian ministers began performing same-sex weddings. They too were charged but like West the charges were dismissed. During this time, another New York mayor sided with West, Nyack Mayor John Shields announced the following day on February 28, that he would recognize same-sex marriages performed outside of the town. A few days later, Shields would gain even more attention of the whole state when his actions would set off a string of court cases.

On March 3, 2004, Shields and his fiancée joined other gay and lesbian couples in seeking marriage licenses from the municipal clerks' offices at Orangetown Town Hall.¹⁶⁸ When they were denied, they filed suit challenging the Domestic Relations Law of New York State. In response to this, the Office of Attorney General Eliot Spitzer issued an opinion that clerks should not offer licenses since the Domestic Relations Law did not intended to cover same-sex marriage.¹⁶⁹ The *Shields* case was in fact the second of five cases that would later be decided upon with a decision in front of the New York Court of Appeals. The five cases were *Hernandez v. Robles*, *Shields v. Madigan*, *Samuels v. New York Department of Health*, *Seymour v. Holcomb* and *Kane v. Marsolais*.

Shield's claim, that the licenses should be issued according to the lack of exclusion in the Domestic Relations Law, was not one that the Supreme Court of Rockland County agreed upon.¹⁷⁰ In the majority opinion Justice Alfred J. Weiner, ruled

¹⁶⁷ 365gay, "New Paltz Gay Weddings Anniversary Passes Quietly"; available from <http://www.365gay.com/newscon05/02/022805paltz.htm>; Internet; accessed 14 June 2008.

¹⁶⁸ Beth Shapiro, "3rd New York Marriage Case Heading to High Court," 365Gay.com, available from <http://www.365gay.com/Newscon06/03/032806nyack.htm>; Internet; accessed 13 June 2008.

¹⁶⁹ Caitlin Halligan, Letter to Peter Case Graham, available from http://www.oag.state.ny.us/press/2004/mar/mar3a_04_attach2.pdf; Internet; accessed 13 June 2008.

¹⁷⁰ *Matter of Shields v. Madigan* (2004 NY Slip Op 24393).

that although the law did not exclude same-sex marriage, the law only guaranteed a fundamental right which same-sex marriage was not considered. “Same-sex marriage is not a fundamental right protected by the Due Process Clause of the New York State Constitution. The institution of marriage is a fundamental right founded on the distinction of sex and the potential for procreation. Homosexual marriages do not fall within those guideposts or serve such ends,” said Justice Weiner.¹⁷¹ He concluded with, “Since the statutory scheme at issue does not burden a fundamental right...For the aforementioned reasons, this State’s issuance of marriage licenses only to heterosexual couples is rationally related to legitimate interests in preserving the traditional and legal concept of marriage.”¹⁷² The decision was made based on the fact that same-sex marriage was not “deeply rooted in the Nation’s history and tradition.”¹⁷³ The Court denied that it questioned the morality of homosexuality but again a decision was made on the tradition of culture, which began with homosexuality as being considered immoral. Unable to truly separate morality and legality, the Courts decided that the licenses were not permitted. The plaintiffs sought an appeal.

The next that went to trial was *Samuels v. New York State Department of Health* which was decided on December 7, 2004.¹⁷⁴ In this case thirteen couples, among them New York State Assemblyman Daniel O’Donnell, sought a judgment in their favor from the Supreme Court, Albany County. They like *Shields*, made the claim that their denial of issuance violated the Domestic Relations Law, equal protection under the law and both the Due Process Clause and the freedom of speech protection under the New York

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ *Moore v City of E. Cleveland*, 431 US 494, 503 [1977].).

¹⁷⁴ *Samuels v. New York Department of Health*, NY App. Ct. (High Court) 2006

Constitution.¹⁷⁵ The Court again decided against the plaintiffs, this time using *Lawrence v. Texas* against them when it cited Justice O'Connor's statement that preserving the traditional institution of the marriage is a legitimate State interest. It further added, "The reasons advanced by defendants: ensuring consistency among Federal law and the laws of other States; and preserving the historic, legal and cultural understanding of marriage-are sufficient to satisfy a rational basis review."¹⁷⁶ Not liking the decision, the plaintiffs petitioned an appeal that would eventually be wrapped up with two other cases, *Seymour v. Holcomb* and *Kane v. Marsolais*.

The first of the two to trial was *Kane v. Marsolais* which was decided on January 4, 2005.¹⁷⁷ Again the case took place in Albany County and again sought to bring judgment on the grounds that the Domestic Relations Law does not require a marriage to be between opposite-sex couples and also that the denial violated their constitutional rights of equal protection and due process. However there was a twist in this case with the plaintiffs seeking validity of their marriage under the Domestic Relations Law section which recognized marriages even though they did not obtain a license. All that was needed was a clergyman or public official including a clerk for a marriage to be solemnized.¹⁷⁸ As unique as this approach was, it was not enough for the New York Supreme Court who claimed that it cannot rule on it since there is no evidence that the law denied gay couples any rights. And as before the Court also argued that homosexual marriage was not a fundamental right and thus not protected by the laws that ensure those rights.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ *Kane v. Marsolais*, State of New York Supreme Court, Appellate Division Third Judicial Department, February 16, 2006.

¹⁷⁸ New York Domestic Relations Law. Article 3.

The second trial was that of *Seymour v. Holcomb* which was ruled over by the Tompkins County Supreme Court with its decision coming on February 25, 2005. A group of twenty-five gay couples challenged the Domestic Relations Law and that they should be awarded marriage licenses. This time the Court included more to their answer than a simple denial, “The decision to extend any or all of the benefits associated with marriage is a task for the Legislature, not the courts.”¹⁷⁹

Both these cases along with *Samuels* were joined together on appeal as a single issue. On February 16, 2006 the Appellate Division, Third Judicial Department agreed with the trial courts on the core issue of all three. Thus with one round of vote, three of the first cases pertaining to same-sex marriage in New York were turned away. It decided that it was “not persuaded that plaintiffs have established beyond a reasonable doubt that it is irrational for the Legislature to preserve the historical legal and cultural understanding of marriage.”¹⁸⁰ However these three cases would again see their time in court when they joined two other cases on appeal to New York’s highest court.

Joining them was *Hernandez v. Robles*, February 4, 2005, who moved for summary judgment declaring that under the New York State Constitution, the five same-sex couples brining suit, were entitled to equal treatment in regard to the issuance of marriage licenses and access to civil marriage.¹⁸¹ The defendant Victor Robles, due to his position as administrator of the New York City Marriage License Bureau, also moved for a summary judgment for a dismissal of the complaint. This court differed from the other four in that it, the New York County Supreme Court, decided that these couples were entitled to marriage license and that same-sex marriage is a fundamental right,

¹⁷⁹ *Seymour v. Holcomb*, 790 New York Supreme Court.2d 858 (2003).

¹⁸⁰ *Hernandez and Cohen, et al. v. Robles*, New York City Clerk, NY App. Ct. (High Court), 2006.

¹⁸¹ *Ibid.*

“Marriage, as it is understood today, is both a partnership of two loving equals who choose to commit themselves to each other and a state institution designed to promote stability for the couple and their children. The relationships of plaintiffs fit within this definition of marriage.”¹⁸² Justice Doris Ling-Cohan also spoke about how marriage is ever changing and that the excuse of maintaining the traditional institution is one that does not hold merit. “There has been a steady evolution of the institution of marriage throughout history which belies the concept of a static traditional definition,” quoted Justice Ling-Cohan in her majority opinion.¹⁸³ She gave the state thirty days to appeal, which it did.

Republican Mayor Michael Bloomberg appealed the ruling, refusing to issue licenses based on the lower court’s decision. But in order to reach the State’s highest court it first had to go through a mid-level state court. In August 2005, the Appellate Division, First Judicial Department reversed the lower courts decision with a 4-1 vote. It too agreed with *Seymour*, in that the issue of same-sex marriage should be decided by the legislature not the courts. “The power to create novel rights is reserved for the people through the democratic and legislative processes. We find it even more troubling that the [Manhattan] court, upon determining the statute to be unconstitutional, proceeded to rewrite it and purportedly create a new constitutional right,” said the court.¹⁸⁴ From here the Lambda Legal team appealed to the highest court in New York, the Court of Appeals.

The oral arguments were set for May 31, with both sides awaiting the outcome of the decision. The five cases would all appear over a two day period but the courts would

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

¹⁸⁴ Cheryl Wetzstein. “N.Y. Court Overturns Same-sex ‘Marriage.’” *The Washington Times* 9 December 2005: A07.

treat them as two. The Shields case, however, would be heard on May 28, at the Second Appellate Division in Brooklyn but would have appealed regardless of the decision at the lower level to the higher one.¹⁸⁵ So in essence the decision of the Court of Appeals would be deciding the fate of *Shields*. The two cases heard on May 31 were, *Hernandez v. Robles* and the grouping of the three cases under the name of *Samuels v. New York Department of Health*.

The final decision came on July 6, 2006, with a vote of 4-2 with one justice taking no part in the vote. The Court of Appeals held that the Domestic Relations Law which limited marriage to opposite-sex couples was supported by rational basis as well as that these provisions violated neither the Due Process Clause nor the Equal Protection provided under the law.¹⁸⁶ It too included that it was the responsibility of the Legislature to decide such questions. In his majority opinion Justice Robert S. Smith provided a number of scenarios where the Legislature could and could not allow same-sex marriage. Justice R.S. Smith went on to say, "...we believe the present generation should have a chance to decide the issue through its elected representatives. We therefore express our hope that the participants in the controversy over same-sex marriage will address their arguments to the Legislature."¹⁸⁷ In her dissenting opinion Chief Justice Judith S. Kaye wrote, "The Court concludes, however, that same-sex marriage is not deeply rooted in tradition, and thus cannot implicate any fundamental liberty. But fundamental rights, once recognized, cannot be denied to particular groups on the ground that these groups have historically been denied those rights."¹⁸⁸

¹⁸⁵ Shapiro, "3rd New York Marriage Case Heading to High Court". 365Gay.com

¹⁸⁶ *Hernandez v. Robles*, 855 N.E.2d 1 (N.Y. 2006)

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

This was a blow to gay New Yorkers who believed that, in the aftermath of *Goodridge*, “Today is a sad day for all New Yorkers who believe in the constitutional guarantee of equal protection under law,” said Robert A. Kaplan, lead counsel with the American Civil Liberties Union and the New York Civil Liberties Union for the plaintiffs in one of the four cases.¹⁸⁹ For many gays in New York, they believed that the court’s ruling in *Goodridge* against creating second class citizens and the ruling from *Hernandez* which stated that marriage was ever changing and that gay marriage would damage the traditional view, would alter future courts in their decisions. Again gays in New York were forced to come to the realization that certain rights and beliefs that were told in the past did not hold for the present nor the future.

Furthering their grief was an acknowledgement on the part of Governor Pataki when he said that the right decision was made and that he would not sign a bill which would legalize same-sex marriage if it had ever come across his desk. For some, they believed that they had missed their chance, conversely though there were some signs that things might be changing soon. But although Governor Pataki disagreed with same-sex marriage, he did believe in the right to some sort of equal protection for same-sex couples.

On February 3, 2006, Governor Pataki signed into law the State’s first domestic partnership law.¹⁹⁰ The bill quietly made its way through the Legislature. It was not sweeping bill and probably not the best that could have written up. But it did change one standing law but it was one that was most dear to the gay community. The law amended section 4201 of the New York Public Health Law which defined what a domestic partner

¹⁸⁹ Anemona Hartocollis, “New York Judges Reject any Right to Gay Marriage,” *New York Times* 7 July 2006:A1.

¹⁹⁰ Leonard Link, “New York State’s first domestic partnership law”; available from http://newyorklawschool.typepad.com/leonardlink/2006/02/new_york_states.html; Internet; accessed 12 July 2008.

is.¹⁹¹ It also placed a domestic partner, like a spouse, ahead of a blood relative in the matters concerning burial.¹⁹² This trivial and seemingly uneventful measure was something that the gay community had been looking for since the breakout of the AIDS crisis. When their partner had passed away the remaining partner could no longer be guaranteed in the decision making process unless invited by the family. Now to reinforce the commitment of couples, the surviving partner still had control over their loved one's burial. It showed that the State had realized that a same-sex partner was entitled to the burial arrangements for the time that the couple had committed to each other. It was also one of the first and few times that the State had ruled in favor of a partner over a blood relative in making decisions. This showed a possible loosening of restrictions as least in part to possible legislation without actually awarding marriage. Although this did not forward the progress on marriage it did improve that of at the time only option afforded to same-sex couples. However another Massachusetts court ruling changed that for a numbered few.

Later in the same year, the Massachusetts Supreme Court found itself again at the forefront of the same-sex marriage issue, this time dealing with same-sex couples from neighboring states who had married within the state. It was faced with the question as to whether or not the marriages were legal. Following suit with the 1913 law which then Governor Romney recalled, the Massachusetts Supreme Court ruled that marriages were valid within Massachusetts and in states that allowed same-sex marriage. However New York and Rhode Island did not have specific legislation banning gay marriage. This was

¹⁹¹ *Ibid.*

¹⁹² New York Times, "Pataki Signs Bill on Domestic Partners"; available from <http://query.nytimes.com/gst/fullpage.html?res=9505E1D6173EF934A35751C0A9609C8B63>; Internet; accessed 12 July 2008.

prior to the *Hernandez v. Robles* which was decided on July 6, 2006. Despite the ruling there still remained no law restricting same-sex marriage but with the judicial interpretation of the Domestic Relations Act, it negated any same-sex marriage thereafter. The Massachusetts Supreme Court now had to deal with the fact that some two-hundred New York State couples were married from May 17, 2004-July 6, 2006, in Massachusetts.¹⁹³ With the help of GLAD, *Cote-Whitacre v. Department of Public Health* was filed with Massachusetts Supreme Court in order to clear up the matter of out-of-state marriages and their validity.¹⁹⁴

After analyzing all New York State legislation, statutes and court cases prior to July 6, the Supreme Court ruled that the marriages were valid in Massachusetts and New York. They were to be acknowledged by New York since it has a long tradition of respecting legal marriages from other jurisdictions unless the marriage goes against a public policy. In this case there was no public policy against the marriages during the time before *Hernandez v. Robles*, so it followed that New York would recognize these marriages. This was confirmed in 2004, with a written legal opinion of then Attorney General Elliot Spitzer, who said that valid same-sex marriage licenses from areas where they were legal must be considered valid in the state and was later agreed upon by new Attorney General Andrew Cuomo.¹⁹⁵ However the idea of formally recognizing out-of-state same-sex marriage licenses by the state of New York was raised in a court case a year later.

¹⁹³ 365gay.com. "NY Gay Couples Married in Massachusetts have Weddings Validated," available from <http://www.365gay.com/Newscon07/05/051607nyMarr.htm>; Internet; accessed 14 June 2008.

¹⁹⁴ Gay & Lesbian Advocates & Defense, "Legal Issues for New York Same-sex Couples Who Married in Massachusetts," available from <http://www.glad.org/marriage/Cote-Whitacre/NYCouplesMarriedinMA.pdf>; Internet; accessed 14 June 2008.

¹⁹⁵ 356gay.com, "NY Gay Couples Married in Massachusetts have Wedding Validated".

The case that would formally decide what licenses the state of New York would recognize was *Martinez v. Monroe County*. The case heard before the Supreme Court of the State of New York, Appellate Division Fourth Judicial Department was on appeal from the Monroe County Supreme Court. On July 5, 2004, Patricia Martinez married her partner Lisa Ann Golden in a province of Canada. Following this, Martinez applied for spousal health care benefits for Golden from her employer, Monroe County College.¹⁹⁶ When she was denied, she filed suit since the college offered opposite-sex benefits which violated her rights under the Equal Protection clause of the New York State Constitution. As stated New York State policy in recognizing marriage licenses are that it is valid unless it goes against public policy. The defendant claimed that it does go against public policy established with the decision from *Hernandez*. The court ruled, “As the Court of Appeals indicated in *Hernandez*, the place for the expression of the public policy of New York is in the Legislature, not the courts. The Legislature may decide to prohibit the recognition of same-sex marriages solemnized abroad. Until it does so, however, such marriages are entitled to recognition in New York.”¹⁹⁷ Thus the New York courts provided relief to those couples who were married in other countries and areas to be recognized under New York law. Although this only validated those couples who sought a license during the short timeframe, it was a boost to the community since this decision did some to gain in light of the losses of July 6th.

With out-of-state and out of country marriages now validated in New York, it was now the state’s chance to validate its own couple’s marriage. “Gov. Eliot Spitzer proposed legislation on Friday that would make New York the second state in the country

¹⁹⁶ *Martinez v. County of Monroe*, Supreme Court of the State of New York, appellate Division, Fourth Judicial Department, Feb 1 2008. CA 06-02591

¹⁹⁷ *Ibid.*

to legally sanction same-sex marriage, fulfilling a longtime pledge to supporters of gay rights,” read the opening line of a New York Times article on April 28, 2007.¹⁹⁸ This came only a day after the New York State Department of Civil Service extended its spousal benefits to any state or local employee married to a same-sex spouse. Governor Spitzer had promised to push for legalized same-sex marriage during his gubernatorial campaign. His promise was kept when the bill sponsored by Assemblyman O’Donnell, who had lost his right to marry his spouse, John Banta, with the July 6th ruling, was brought before the State Assembly. The bill would provide for same-sex couples the same opportunity to enter into civil marriages as opposite-sex couples as well as amend the Domestic Relations Law to include a protection over same-sex marriage.¹⁹⁹ Within the supporting statement of bill was expressed its purpose, “This bill removes the barriers in New York law that deprive individuals of the equal right to marry the person of the choice, by granting the same legal recognition to all civil marriages regardless of whether those who enter into them are of the same, or of a different, sex.”²⁰⁰

The debate in Albany was a heated one with the bill affecting both sides greatly. Unfortunately those oppose to the bill did not legally approach the issue but rather relied on their upbringing and tradition. They did not see same-sex marriage as a legal deprivation but as an evil, immoral act which would condone the homosexual lifestyle. Republican Brian Kolb mentioned this fact, “I do feel threatened. I do feel harmed. It’s a direct challenge to me and how I was brought up.”²⁰¹ Some members took it even further

¹⁹⁸ Nicholas Confessore, “Keeping His Word, Spitzer Asks for Same-Sex Marriage Law,” New York Times 23 April 2007.

¹⁹⁹ New York State bill A08590 same as S 5884.

²⁰⁰ *Ibid.*

²⁰¹ WBEN 930 AM, “Assembly Approves Gay Marriage,” available from <http://www.wben.com/news/fullstory.php?newsid=07752>; Internet; accessed 14 June 2008.

when Democrat Dov Hikind sarcastically suggested, “Maybe we should include incest in the bill and sort of deal with the whole package at on time.”²⁰² On the other side of the issue stood those who the bill would personally affect. O’Donnell in his opening statements pointed to the fact that civil unions were not good enough and only marriage would secure him and spouse the rights they are entitled to. But probably the most emotional reply was that of Democrat Mathew Titone, who accepted both the bill and a marriage proposal from his partner, who he was on the phone with at the time.

After much discussion over the bill, the Assembly voted yes on June 19, 2007, with an 85-61 margin.²⁰³ That same day Bill A08590 was sent to the Senate where it became Bill S 5884. It was unlikely that the bill would see any further than the Assembly, since the State Senate was controlled by Republicans, with it being even more unlikely that the bill would even see the floor. Senate majority Leader Joseph Bruno spoke about this since the session was coming to a close, “We are not doing gay marriage by Thursday that’s for sure, or this year.”²⁰⁴ With the close of the New York State Senate came the chances of the bill’s passage. With the session over, the bill died when it re-opened on January 9, 2008. But it did have life left when it was sent back to the Assembly, who in turn ordered it to a third reading. This is where it has sat since being ordered.

This bill if passed would make New York State the third state in the union to allow same-sex marriage. Although the bill had died on its first try, it showed hope for those who had fought from Stonewall to Albany for equal rights under the state’s laws. But as it stands New York’s gay community must wait until those legislators in Albany

²⁰² *Ibid.*

²⁰³ New York State bill A08590 same as S 5884.

²⁰⁴ WBEN 930 AM, “Assembly Approves Gay Marriage”.

decide when their relationships can be acknowledged by the state government and gain the equal footing of their heterosexual counterparts. For the homosexuals in New York it has seen years of progress and setbacks. The bill if passed would be a culmination in New York and show the long road from the early call for gay marriages in the 1970s.

The modern gay rights movement began when a group of bar patrons was tired of being abused and stood up to those in power. With the sexual revolution as a base, the gay rights movement was concerned with their sexual freedom and the exploration of the pleasures of life. But after the initial years after the riots, it was time for the movement to grow and push for equality. Loosing their radical side due to age and outside influences such as AIDS, the movement decided against radical marches and demonstrations in hopes of actually achieving changes within the framework of the court systems and legislature. The movement that sought the right to sex eventually sought the right to marry. As the participants grew older and more mature so did the movement. The glory days of the sexual revolution had the young participants searching for the next encounter while the AIDS crisis had the aged participants looking for the fundamental rights entitled to them and their partners.

The sexual revolution gave birth to the days that allowed for the modern movement to flourish but it took a destructive disease to truly organize it. The struggle for same-sex marriage emerged out of necessity and it was this necessity that pushed the fight from 1969 until now in New York State. Standing in the way is America's sense of inherited morality and belief in fundamental and natural rights, all of which exclude homosexuals and their rights. But as the fight as progressed, it has been the state and city governments and court systems that have given in with the gay community still fighting

strong. With constant setbacks and victories the gay community has done its best to fight for equal rights that have been denied to them based on the one they love.

With New York as the birth of the modern movement, it has become a fierce battleground for equal rights. Battles have been won and lost within the state as well as outside of it. Proponents hope that with some examples from the outside and pressure from within, the state will amend its laws and fully accept and acknowledge that the gay community is present and worthy of the rights entitled to those of opposite-sex marriages.

Bibliography

Primary Sources

365gay.com. "New Paltz Gay Weddings Anniversary Passes Quietly." Available from <http://www.365gay.com/newscon05/02/022805paltz.htm>. Internet; accessed 14 June 2008.

365gay.com. "NY Gay Couples Married in Massachusetts have Weddings Validated." Available from <http://www.365gay.com/Newscon07/05/051607nyMarr.htm>. Internet; accessed 14 June 2008.

WBEN 930 AM. "Assembly Approves Gay Marriage." Available from <http://www.wben.com/news/fullstory.php?newsid=07752>. Internet; accessed 14 June 2008.

American Psychiatric Association, "APA Asks the Pentagon to Update Instruction Listing Homosexuality as a Mental Disorder." Available from <http://www.psych.org/MainMenu/Newsroom/NewsReleases/2006NewsReleases/06-44aparequestspentagonupdateinstructioncitinghomosexuality.aspx>. Internet; accessed 8 May 2008.

"An Instant Cure." *Time*, 1 April 1974.

Articles by Jonathan Rauch. "Families Forged by Illness." Available from http://www.jonathanrauch.com/jrauch_articles/first_aids_then_marriage_1/index.html. Internet; accessed 8 July 2008.

BNET. "Worldly wisdom: Brad Gooch wrote his way through the sex-drenched '70s and AIDS-plagued '80s." Available from http://findarticles.com/p/articles/mi_m1589/is_2003_August_19/ai_106560159. Internet; accessed on 13 July 2008.

Baer v. Miike, Supreme Court of the State of Hawaii, December 9, 1999.

Baker v. State (98-032), Supreme Court of Vermont, December 20, 1999.

Bowers v. Hardwick, 478 U.S. 186 (1986).

Braschi v. Stahl Associates Company, New York Court of Appeals, July 6, 1989.

Browne, Christopher. "New York court takes up gay marriage." *CNN.com*. Available from <http://www.cnn.com/2006/LAW/05/30/ny.gaymarriage/index.html>. Internet; accessed 17 March 2008.

Chibbaro Jr., Lou. "Spitzer's Fall Could Hinder New York Marriage Bill."

Washington Blade. Available from <http://www.washblade.com/2008/3-14/news/national/12226.cfm>. Internet; accessed 26 March 2008.

Cohen, Andrew. "Same-Sex Marriage in NY." CBSNEWS. Available from <http://www.cbsnews.com/stories/2005/02/06/opinion/courtwatch/main671958.shtml>; Internet; accessed 17 March 2008.

Daily News. "Higher Standards, Better Results." Available from http://www.nydailynews.com/archives/opinions/1995/02/04/1995-02-04_higher_standards__better_res.html. Internet; accessed 10 July 2008.

Defense of Marriage Act 1997

Pub. L. 104-199, sec 1, 100 Stat. 2419 (Sep. 21, 1996), codified at 1 U.S.C. § 7 (1997). Pub. L. 104-199 sec. 2, 100 Stat. 2419 (Sep. 21, 1996), codified at 28 U.S.C. § 1738C (1997).

Empire State Pride Agenda Press Release. "Gay Rights Lobby Welcomes Pataki Reissue of Order Banning Discrimination: Governor's OK an important victory for Lesbian and Gay community." 2 May 1996.

Gallup News Service. "American Attitudes toward Homosexuality Continue to Become More Tolerant." Available from <http://www.gallup.com/poll/4432/American-Attitudes-Toward-Homosexuality-Continue-Become-More-Tolerant.aspx>. Internet; accessed 9 July 2008.

Gallup News Service. "Americans have Complex Relationship with Marriage." Available from <http://www.gallup.com/poll/23041/Americans-Complex-Relationship-Marriage.aspx>. Internet; accessed on 8 July 2008.

Gallup News Services. "Some Change over Time in American Attitudes towards Homosexuality, but Negativity Remains." Available from <http://www.gallup.com/poll/4045/Some-Change-Over-Time-American-Attitudes-towards-Homosexuality.aspx>. Internet; accessed 10 July 2008.

Gay & Lesbian Advocates & Defense. "Legal Issues for New York Same-sex Couples Who Married in Massachusetts." Available from <http://www.glad.org/marriage/Cote-Whitacre/NYCouplesMarriedinMA.pdf>. Internet; accessed 14 June 2008.

Gay Liberation Front: Manifesto. Nottingham, England: Russell Press Ltd., 1979.

Georgia Code Ann. 16-6-2.

Goodridge v. Department of Health, 798 N.E.2d 941 (Massachusetts 2003).

Giuliani, Rudy. Letter to Richard Dadey, Jr. 17 October 1997.

H.R. 3313 [108th]: Marriage Protection Act of 2004.

Halligan, Caitlin. Letter to Peter Case Graham. Available from http://www.oag.state.ny.us/press/2004/mar/mar3a_04_attach2.pdf. Internet; accessed 13 June 2008.

Hausman, Ken. "Pentagon Does About Face n Classifying Homosexuality." *Psychiatry News* 41, no. 14 (July 21, 2006): 9.

Hebel v. West, New York Appellate Court, 2005.

Hernandez and Cohen, et al. v. Robles, New York City Clerk, New York Appellate Court. (High Court), 2006.

Humm, Andy. "Christine Quinn and Gay Rights in NYC." *Gotham Gazette*. Available from <http://www.gothamgazette.com/article/civilrights/20060105/3/1703>. Internet; accessed 17 March 2008.

In re Estate of Cooper, 564 N.Y.S.2d 684, 688 (New York Family Court 1990).

Irons, Peter. "The Courage of Their Convictions." *Free Press* 1988: 394.

Jackson, Don. "Reflections on the N.Y. Riots." *Los Angeles Advocate* October 1969: 11.

Kane v. Marsolais, State of New York Supreme Court, Appellate Division Third Judicial Department, February 16, 2006.

Kher, Unmesh. "July 27, 1982: A Name for the Plague." Available from <http://www.time.com/time/80days/820727.html>. Internet; accessed 18 May 2008.

Lazarus, Edward. "The Changing Battlefield in the Gay Marriage War: The Progress of a Civil Rights Movement Outside and Within the U.S. Supreme Court." *FindLaw.com*. Available from <http://writ.news.findlaw.com/lazarus/20040304.html>. Internet; accessed 25 March 2008.

Lawrence v. Texas, 539 U.S. 558 (2003).

Lectric Law Library. "United States Congress. Defense of Marriage Act. Washington: H.R. 3396." Available from <http://www.lectlaw.com/files/leg23.htm>. Internet; accessed 10 July 2008.

Leonard Link. "New York State's first domestic partnership law." Available from http://newyorklawschool.typepad.com/leonardlink/2006/02/new_york_states.html. Internet; accessed 12 July 2008

Levenson, Michael. "After 2 years, same-sex marriage icons split up." Boston Globe 21 July 2006.

Lewis, Raphael. "After vote, both side in debate energized." Boston Globe. Available from http://www.boston.com/news/local/Massachusetts/articles/2005/09/15/after_vote_both_sides_in_debate_energized/. Internet; accessed on 11 July 2008.

The Library of Congress. "Defense of Marriage Act." Available from http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=104_cong_public_laws&docid=f:publ199.104. Internet; accessed 10 June 2008.

Loving v. Virginia, 388 U.S. 1 (1967).

Marriage Protection Act of 2007 (MPA, HR 724).

Martinez v. County of Monroe, Supreme Court of the State of New York, appellate Division, Fourth Judicial Department, Feb 1 2008. CA 06-02591

Matter of Shields v. Madigan (2004 NY Slip Op 24393).

Moore v. City of E. Cleveland, 431 US 494, 503 [1977].).

Morbidity and Mortality Weekly Report. "Pneumocystis Pneumonia-Los Angeles." Available from http://www.cdc.gov/mmwr/preview/mmwrhtml/june_5.htm. Internet; accessed 18 May 2008.

Morbidity and Mortality Weekly Report. "Update on acquired immune deficiency syndrome (AIDS)-United States." Available from <http://www.ncbi.nlm.nih.gov/pubmed/6815471>. Internet; accessed 25 May 2008.

NYC Department of Health and Mental Hygiene. "HIV Surveillance & Epidemiology Program Quarterly Report." Available from <http://www.gmh.org/health/statistics.html>. Internet; accessed 3 July 2008.

Newport, Frank. "American Attitudes toward Homosexuality Continue to become more Tolerant." Available from <http://www.gallup.com/poll/4432/American-Attitudes-Toward-Homosexuality-Continue-Become-More-Tolerant.aspx>. Internet; accessed 3 June 2008.

Newsweek, 1986-1994.

New American Bible. New York: Catholic Book Publishing Co., 1970.

New York City Clerk's Office. "Domestic Partnership Registration." Available from http://www.cityclerk.nyc.gov/html/marriage/domestic_partnership_reg.shtml. Internet; accessed 12 June 2008.

New York City Mayoral Executive Order No. 123, 7 August 1989.

New York City Mayoral Executive Order No. 49, 7 January 1993.

New York Daily News, 1995-1997.

New York Domestic Relations Law. Article 3.

New York State. "The Sexual Orientation Non-Discrimination Act (SONDA)." Available from http://www.oag.state.ny.us/civilrights/sonda_brochure.html. Internet; accessed 10 June 2008.

New York State Bill A08590 same as S 5884.

New York State Governor's Office (April 27, 2007). "Proposed Legislation Would Create Civil Marriage Equality." Press Release. Retrieved on 2008-3-17.

New York State Gubernatorial Executive Order No. 28, 1993.

New York Times, 1969-2008.

The People of the State of New York, Appellant v. Ronald Onofre, Respondent v. Conde J. Peoples, II and Philip S. Gross, Appellants v. The People of the State of New York, Respondent v. Mary Sweat, Appellant. Court of Appeals of New York, 51 N.Y. 2d 476 1980.

Powell v. The State of Georgia, Supreme Court of Georgia 270 Ga. 327 (1998).

Quill v. Vacco, 80 F.3d 716, 725.

Samuels v. New York Department of Health, NY App. Ct. (High Court) 2006.

Sager, Ryan. "Giuliani's Startling Departure." The New York Sun. 27 April 2007.

Schindler, Paul. "New Governor, Old Friend." Gay City News. Available from http://gaycitynews.com/site/news.cfm?newsid=19386943&BRD=2729&PAG=461&dept_id=568864&rft=6. Internet; 26 March 2008.

Seymour v. Holcomb, 790 N.Y.S.2d 858 (2003).

Shepard, Benjamin H. "The Queer/Gay Assimilationist Split: The Suits vs. the Sluts."

Monthly Review, May 2001, 49-62.

Shields v. State, 783 N.Y.S. 2d 270 (Oct. 18, 2004).

Smith, Tom W. "A Report: The Sexual Revolution?" *The Public Opinion Quarterly* 54, no. 3 (Autumn, 1990): 415-435

Storrs v. Holcomb. Supreme Court of New York, Appellate Division, Third Department. 245 A.D. 2d 943; 666 N.Y.S.2d 835; 1997 N.Y. App. Div.

Storrs v. Holcomb. Supreme Court of New York, Tompkins County. 168 Misc. 2d 898; 645 N.Y.S. 2d 286; 1996 N.Y.

Texas Penal Code Ann. 21.06(a) (2003).

Tribe, Laurence H. "Lawrence v. Texas: The 'Fundamental Right' That Dare Not Speak Its Name." *Harvard Law Review* 117:1894-95 (2004).

United States Census Bureau. "2003 Statistical Abstract." Available from <http://www.census.gov/prod/2004pubs/03statab/vitstat.pdf>. Internet; accessed on 8 July 2008.

United States Census Bureau. "Selected Social Characteristics in the United States: 2006." Available from http://factfinder.census.gov/servlet/ADPTable?_bm=y&-geo_id=01000US&-context=adp&-ds_name=ACS_2006_EST_G00_&-tree_id=306&-_lang=en&-_caller=geoselect&-format=. Internet; accessed 14 June 2008.

United States Congress. Defense of Marriage Act. Washington: H.R. 3396.

United States House of Representatives Clerk. "Final Vote Results for Roll Call 316." Available from <http://clerk.house.gov/evs/1996/roll316.xml>. Internet; accessed 11 June 2008.

United States: Legislation & Records. "U.S. Senate Roll Call Votes 104th Congress – 2nd Session." Available from http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=104&session=2&vote=00280#top. Internet; accessed 11 June 2008.

Wetzstein, Cheryl. "N.Y. Court Overturns Same-sex 'Marriage.'" The Washington Times. 9 December 2005, p. A07.

Wolfson, Evan. "Constitutional Marriage Amendment—Against." Washington Post. Available <http://www.washingtonpost.com/wp-dyn/articles/A49309-2004Jul14.html>. Internet; accessed 17 March 2008.

Wright, Lionel. "The Stonewall Riots – 1969." Socialism Today. Available from

<http://socialistalternative.org/literature/stonewall.html>. Internet; accessed 24 March 2008.

Zinns, Jay. "Rights of Inheritance." *The Cooperator*, March 1995.

Secondary Sources

ACT UP. Available from <http://www.actupny.org/>. Internet; accessed 3 June 2008.

Amsel, Robert. "Back to our Future?" Available from <http://www.thegreenduck.com/ga/stonewall.shtml>. Internet; accessed 28 April 2008.

Blake, Nelson Manfred. The Road to Reno; A History of Divorce in the United States. New York: Macmillan, 1962.

Carter, David. Stonewall: The Riots that Sparked the Gay Revolution. New York: St. Martin's Press, 2004.

Chauncey, George. Gay New York: Gender, Urban Culture and the Making of the Gay Male World, 1890-1940. New York: Basic Books, 1994.

Chauncey, George. Why Marriage?: The History Shaping Today's Debate Over Gay Equality. Cambridge, MA: Basic Books, 2004.

Cott, Nancy F. Public Vows: A History of Marriage and the Nation. Cambridge, Massachusetts: Harvard University Press, 200.

Dart, John Dart. "The Pastor behind the Gay Marriage Ruling." Available from <http://www.christiancentury.org/article.lasso?id=4857>. Internet; accessed 3 June 2008.

DOMAwatch. "Federal Defense of Marriage Act (DOMA)." Available from <http://www.domawatch.org/about/federaldoma.html>. Internet; accessed 10 June 2008.

Doshow, Emily. "Same-sex Marriage: Developments in the Law." NOLO. Available from <http://www.nolo.com/article.cfm/pg/1/objectId/6DF0766E-C4A3-4952-A542F5997196E8B5/catId/64C2C325-5DAF-4BC8-B4761409BA0187C3/118/304/190/ART/>. Internet; accessed 11 July 2008.

Duberman, Martin. Stonewall. New York: A Plume Book, 1993.

Dupuis, Martin. Same-sex Marriage, Legal Mobilization and the Politics of Rights. New York: Peter Lang, 2002.

- Empire State Pride Agenda. "Incremental Steps by the New York State Government." Available from <http://www.prideagenda.org/IssuesExplained/MarriageandFamilyProtection/QuickFacts/IncrementalStepsbytheNewYorkStateGovernment/tabid/198/Default.aspx>. Internet; accessed 29 May 2008.
- Empire State Pride Agenda. "New York City Takes Historic Step on Domestic Partnership." Available from http://www.columbia.akadns.net/cu/gables/dpinfo_nyc/espa_pressrelease_1998-07-08.html. Internet; accessed 11 June 2008.
- Empire State Pride Agenda. "Pride Agenda History." Available from <http://www.prideagenda.org/tabid/56/Default.aspx>. Internet; accessed 7 June 2008.
- glbtq: An Encyclopedia of Gay, Lesbian, Bisexual, Transgender & Queer Culture. "The Sexual Revolution 1960-1980." Available from http://www.glbtq.com/social-sciences/sexual_revolution.html. Internet; accessed 22 April 2008.
- Gay Men's Health Crisis. "HIV/AIDS Timeline." Available from <http://www.gmhc.org/about/timeline.html>. Internet; accessed on 3 July 2008.
- Gay Liberation Front. "History." Available from <http://www.gayliberationfront.com/History.html>. Internet; accessed 2 July 2008.
- GovTrack. "Bill Search- Marriage Protection Act." Available from <http://www.govtrack.us/congress/billsearch.xpd?PostFormID=billsearch&AutoPostBackField=&AutoPostBackValue=&AutoPostBackState=&q=marriage+protection+act&session=109&chamber=&status=>. Internet; accessed 12 June 2008.
- Grossberg, Michael. Governing the Health: Law and the Family in Nineteenth Century America. Chapel Hill: University of North Carolina Press, 1985.
- Grossman, Joanna. "The Proposed Marriage Protection Act: Why It May Be Unconstitutional". FindLaw.com. Available from <http://writ.news.findlaw.com/grossman/20040727.html>. Internet; accessed 11 June 2008.
- International Gay Information Center, Inc. "Gay Activists Alliance." Available from <http://microformguides.gale.com/Data/Introductions/20240FM.htm>. Internet; accessed 5 May 2008.
- Indiana University. "IU News Room: Gay Marriage." Available from <http://newsinfo.iu.edu/tips/page/normal/1440.html>. Internet; accessed 24 March 2008.
- Johnson, David K. The Lavender Scare: The Cold War Persecution of Gays and Lesbians

in the Federal Government. Chicago: University of Chicago Press, 2004.

Lambda Legal. "Goodridge v. Department of Health". Available from <http://www.lambdalegal.org/our-work/in-court/cases/goodridge-v-department-of.html>. Internet; accessed 11 July 2008.

Marcus, Eric. Making History: The Struggle for Gay and Lesbian Equal Rights 1945-1990. New York: Harper Perennial, 1992.

NOLO. "Domestic Partnership Benefits." Available from <http://www.nolo.com/article.cfm/ObjectID/86D4108D-25D1-498A-B38AF4AB25F14E84/catID/F896EE61-B80C-4FE1-B1687AC0F07903BA/118/304/ART/>. Internet; accessed 1 June 2008.

PBS. "People & Events: Mrs. America: Women's Roles in the 1950s." Available from http://www.pbs.org/wgbh/amex/pill/peopleevents/p_mrs.html. Internet; accessed 13 July 2008.

PBS. "People & Events: The Pill and the Sexual Revolution." Available from http://www.pbs.org/wgbh/amex/pill/peopleevents/e_revolution.html. Internet; accessed on 13 July 2008.

Phy-Olsen, Allene. Same-sex Marriage. Westport, Connecticut: Greenwood Press, 2006.

Rauch, Jonathan. Gay Marriage: Why It Is Good for Gays, Good for Straights and Good for America. New York: Henry Holt and Company, LLC, 2004.

Schwyer, Hugo. Gay Rights Movement: Going Forward or Backward? George Mason University's History News Network. Available <http://hnn.us/articles/12358.html>. Internet; accessed 24 March 2008.

Sherman, Suzanne, ed. Lesbian and Gay Marriage: Private Commitments, Public Ceremonies. Philadelphia: Temple University Press, 1992.

Sodomy Laws. "New York: Answers to Common Questions." Available from <http://www.sodomylaws.org/>. Internet; accessed 3 July 2008.

Teal, Donn. *The Gay Militants: How Gay Liberation Began in America, 1969-1971*. New York: St. Martin's Press, 1971.

University of Michigan. "ACT UP Preliminary Position Statement." Available from <http://www.umich.edu/~spp638/Preliminary%20Position/PPS-ACTUP.doc>. Internet; accessed 3 July 2008.

Wolfson, Evan. Why Marriage Matters: America, Equality and Gay People's Right to

Marry. New York: Simon and Schuster, 2004.

Yoshino, Kenji. "Tribe." Available from
<http://img.slate.com/media/29/YoshinoFinalCopy.pdf>. Internet; accessed 27 May
2008.

